6

No. 91-983

In The

Supreme Court of the United States

October Term, 1991

ALLSTATE INSURANCE COMPANY,
an Illinois Corporation,

Petitioner,

v.

SAMUEL F. FORTUNATO,
Commissioner of Insurance of
The State of New Jersey,

Respondent.

Petition For A Writ Of Certiorari To The Appellate Division Of The Superior Court Of The State Of New Jersey

PETITIONER'S REPLY AND SUPPLEMENTAL BRIEF IN SUPPORT OF ITS PETITION FOR A WRIT OF CERTIORARI

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14 pp

TABLE OF CONTENTS

TABLE OF CONTENTS OF APPENDIX

TABLE OF CONTENTS OF APPENDIX – Continued

TABLE OF AUTHORITIES

Page

CASES

PETITIONER'S REPLY AND SUPPLEMENTAL BRIEF IN SUPPORT OF ITS PETITION FOR A WRIT OF CERTIORARI

Allstate Insurance Company submits this combined reply and supplemental brief for two purposes: first, to update the Court on matters of import occurring since Allstate filed its original petition for certiorari; second, to correct the serious mischaracterization of Allstate's legal position in the Respondent's Brief in Opposition.

I. RECENT EVENTS UNDERSCORE THE OUTRAGES IN NEW JERSEY'S APPLICATION OF ITS SYSTEM OF AUTOMOBILE INSURANCE RATE REGULATION AND THE CONTINUING SIGNIFICANCE OF THIS LITIGATION.

For two years, New Jersey has sought to force Allstate and other insurance carriers to take over the business previously lodged with its State-operated JUA, whose inadequate pricing created a deficit of over $3 billion dollars between 1983 and 1990. To this end, New Jersey required all carriers to take a portion of the old JUA business, now lodged in the MTF, without any advance determination that the rates set by the State would allow insurers to earn a constitutionally protected return.

Allstate asks this Court to compel New Jersey to provide at least preliminary judicial review of the adequacy of the rates for depopulation risks before compelling Allstate to insure those risks. Judicially noticeable documents (Pet. 17 n.15) show that these events occurred after filing of the Petition.

(1) On December 31, 1991, the Commissioner reissued the Depopulation Order. (Pet. Supp. App. 91-114) As modified by a new statute (Pet. Supp. App. 74-90), this Order is substantively similar to the original order, and requires Allstate to offer policies to successive groups of MTF insureds through February, 1993. Allstate intends to appeal from this Order and has sought a stay.

(2) On December 20, 1991, the Commissioner approved only a 14.9% increase in MTF rates, an amount his own actuaries admit will be inadequate for future MTF business. (Pet. Supp. App. 1-21) An appeal of this decision is pending; interim relief was denied without passing upon any facts relating to rate adequacy (Pet. Supp. App. 22-27) A further 16.8% increase in MTF rates is proposed. (Pet. Supp. App. 28-52) Yet, even if granted, this increase still leaves the MTF rates inadequate for the risks the Depopulation Order requires Allstate to assume. (Pet 18-19 n. 17)

(3) The Commissioner's actuaries have now reported that the MTF's former rates (at which the original Depopulation Order required Allstate to issue policies) produced a $375 million loss during the MTF's first year of operation. (Pet. Supp. App. 53-56) Of this amount, $180 million would have fallen on Allstate and other insurers had they insured sufficient depopulation risks at MTF rates. (Pet. Supp. App. 68) The Commissioner proposes to amend the MTF Plan of Operation to assess this portion of the MTF loss against Allstate and other insurers with depopulation shortfalls, while precluding them from including that assessment in any future rate filing. (Pet. Supp. App. 57-73, 115-116) Allstate's share of this penalty assessment would be over $30 million. (Pet. Supp. App. 69)

Thus, Allstate now faces a revived order to insure depopulation risks, still without any opportunity to obtain prior judicial review of the adequacy of the rates permitted for that business. Moreover, it faces an unrecoverable assessment exceeding $30 million based on its past failure to depopulate without access to such review.[1]

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[1] The fact that the assessment is to be unrecoverable necessarily assumes that Allstate's past failure to depopulate was wrongful. But, in light of the now indisputable inadequacy of the MTF rates, Allstate would surely have been protected

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Additionally, absent fortuitous delay in revising this order pursuant to the Appellate Division's decision, Allstate would long ago have had to insure depopulation risks at rates now known to be inadequate. This both underscores the need for preliminary relief and shows this to be a controversy "capable of repetition, yet evading review." *See Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911).

II. NEW JERSEY CONTINUES TO SUBJECT ALLSTATE TO ITS CONFISCATORY REGIME OF REGULATION WITHOUT ANY PRIOR JUDICIAL DETERMINATION OF THE CONSTITUTIONALITY OF ITS RATES.

Allstate's Petition presents this Court with an important question of constitutional principle: does due process require some *advance* judicial review of the constitutional adequacy of rates for new business that the State forces upon a regulated firm. Allstate's claim is modest: it asks only that the State not be allowed to force it to assume extensive liabilities without some prior judicial review *of the facts on rate adequacy* comparable to the preliminary injunction proceedings which are available to protect against irreparable infringement of other constitutional rights. New Jersey concedes that its ratemaking procedures are subject to constitutional limits, but insists

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against any depopulation obligation had it been granted the procedural protections it seeks here. Thus, if Allstate was entitled to those protections, its refusal to depopulate without them was not wrongful, and New Jersey is not free to penalize it. Because the Commissioner now seeks to penalize Allstate for its past failures to depopulate at inadequate rates, even an order prospectively allowing adequate rates for depopulation risks would not eliminate the controversy here. *See, e.g., Southern Pacific Co. v. ICC*, 219 U.S. 433, 452 (1911) (continuing collateral consequences of expired order preclude mootness).

that this case involves only "hotly contested factual issues" unworthy of this Court's review. (Br. in Opp. 9)

New Jersey is wrong. Its conduct throughout this massive and unfortunate litigation has honored the requirements of the just compensation clause only in the breach. The litigation nightmare that has followed since the passage of the New Jersey Fair Automobile Insurance Reform Act ("FAIRA") has arisen precisely because New Jersey has exploited the absence of effective judicial review during protracted and proliferating administrative proceedings to violate every principle of due process and just compensation law in order to wring the last cent out of Allstate and other insurance carriers held captive by its laws within the State.

The Commissioner asserts that Allstate has already received judicial review of rate adequacy and is simply unhappy with the result. However, *the Appellate Division could not have based its decision on the probable inaccuracy of Allstate's showing of a confiscatory effect because the Commissioner had not assembled any record which could support his alleged disbelief in that effect.*[2] Nor did the Appellate

[2] Allstate's evidence of MTF rate inadequacy was uncontradicted: Allstate actuaries, actuaries retained by the MTF actuarial committee, the Commissioner's own actuaries and regulatory presumptions all agreed. (Pet. 29-30; Pet. App. A-187A to -227A, A-140A to -144A) Recent developments have confirmed that showing. (Pet. App. A-312 to -337; Pet. Supp. App. 28-56) The facts which the Commissioner did dispute related to Allstate's "voluntary market" rates and his affidavits, even if taken as true, did not rebut Allstate's prima facie case of confiscation. Some of those facts (Br. in Opp. A-1 to -7) related only to rates for past years, whose adequacy or inadequacy cannot affect current rate levels. Others (Br. in Opp. A-16 to -18) would indicate some current excess profits, but would not show enough such profits to offset the undisputed MTF losses. Moreover, were Allstate realizing excessive profits in New Jersey, it obviously would not be withdrawing.

Division purport to resolve, even preliminarily, the issue of whether the Depopulation Order would have a confiscatory effect. Rather, it emphasized its inability to do so. (Pet. App. A-62 to -64)

To allow the Commissioner to transform the inability to review his action into a judicial endorsement of that action would create a blueprint for States to confiscate property at will, and without any possibility of prevention, so long as they arrange a suitably protracted administrative process whose completion is a precondition to judicial review.

The lack of an adequate record was not Allstate's fault. It presented prima facie proof to the Commissioner on a motion to stay, and he could have marshalled any contrary evidence and conducted proceedings (similar to a preliminary injunction hearing) to test the respective cases and reach a judicially reviewable conclusion as to the probable facts. *Instead, both the Commissioner and the courts refused to create or require an appropriate record and then denied relief to Allstate based on the record's inadequacies.* That is not due process.

Even if the Depopulation Order was a matter of urgency which could not be delayed for evidentiary proceedings (a fact belied by the subsequent seven-month delay in revising it to conform to the Appellate Division decision), there was a third alternative; provisional rate relief, subject to refund, pending further proceedings. *See, e.g., Prendergast v. New York Telephone Co.,* 262 U.S. 43 (1923). Sensitive administration of such a power (under standards similar to those for preliminary injunctions) would enable New Jersey to reconcile the objectives of preventing possible confiscation, conducting orderly and complete administrative proceedings, and promptly addressing urgent public problems. New Jersey should not be permitted to forego such reconciliation (by refusing to provide for provisional rates) at the cost of irreparable injury to Allstate's constitutional rights.

III. THE BASIC STRUCTURE OF NEW JERSEY RATE REGULATION REQUIRES CLOSE JUDICIAL SCRUTINY.

Several features of the New Jersey insurance rate regulation system call for special attention by this Court to the need to protect insurers subject to that system.

(1) ALLSTATE IS NOT IN A VOLUNTARY MARKET. The repeated reference to the "voluntary" market in the Commissioner's brief (Br. in Opp. i, 1, 4, 5, 12) is blatantly hypocritical. New Jersey law requires automobile insurers to continue insuring in perpetuity virtually all their existing customers, to take on enormous additional volumes of depopulation business to which they object, and (effective April 1, 1992) to accept all applicants (except a small percentage of drivers with records so bad that they are statutorily consigned to an assigned risk plan). An insurer has no power to set its own rates. Allstate is a conscript, not a volunteer.

(2) ALLSTATE HAS NO EXIT RIGHT. Despite Allstate's request to cease doing business in New Jersey, FAIRA and the Commissioner require Allstate to continue writing New Jersey automobile insurance (and to substantially increase its business volume) for many years hence. In addition, the Commissioner requires Allstate, as a condition of such cessation, to surrender all licenses to write other (historically profitable) lines of business in the State.

Allstate would willingly forfeit all its licenses; willingly suffer the loss of its good will, its physical plant, and its established organization in New Jersey; and willingly bear the heavy costs of unraveling its business and property arrangements within the State, solely in order to escape oppressive regulation under FAIRA. It seeks to do this as rapidly as possible, consistent with responsible treatment of current policyholders. But New Jersey insists that it stay.

New Jersey's decision to deny automobile insurers the right of exit speaks volumes about whether New Jersey's procedures can or will allow Allstate to recover

its constitutionally protected return on its investment. The State argues that a firm may be required to take a loss on one line of business if it can recoup that loss on another line.[3] Accepting that premise *arguendo,* recoupment is somewhat protected where the exit right is in place, because the firm can leave if it is not able to realize a satisfactory rate of return on its entire line of business. But once the exit right is extinguished, there is no private counterweight to oppressive government regulation. Thus, strong procedural protections are even more necessary to preserve the constitutional right to a fair return.

(3) THE BURDEN OF NEW JERSEY'S REGULATORY SCHEME IS BORNE BY RESIDENTS OF OTHER STATES, WHO HAVE NO VOICE IN ITS POLITICAL PROCESS. When New Jersey decided to operate the JUA, the burden of subsidizing its losses was to fall on its citizens. By insisting that private companies take over the JUA's debt and its money-losing business, New Jersey has exported this burden, for Allstate must dedicate income and capital generated outside New Jersey to offset the State-created losses in New Jersey. This expropriation of out-of-state values again calls for closer scrutiny.

IV. UNWARRANTED "REGULATORY LAG" CANNOT JUSTIFY THE DEPRIVATION OF DUE PROCESS.

New Jersey justifies its dilatory practices by pointing to the inevitable level of "lag" that is built into any

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[3] The State's cases involve monopolies. The highly competitive automobile insurance industry involves no opportunity for monopoly profits and no opportunity to realize cross-subsidies. Hence, the State's system of regulation in this area must be subject to closer scrutiny to assure that the regulated party is allowed the return on investment constitutionally required. Under a system of purely prospective ratemaking, such supervision is only possible if the rates for compulsory new business are judicially reviewable, at least on a preliminary basis, *before* the regulated company must undertake the business.

regulatory system. (Br. in Opp. at 11). But New Jersey has raised regulatory lag to a new art form. It has done all in its power to slow the process of ratemaking in order to postpone the day of final reckoning, while claiming that judicial review is inappropriate because no final determination has been made regarding Allstate's overall rate needs.[4]

By spinning out endless procedural delays, the Commissioner is able to stonewall the courts and to conscript Allstate into writing as much business at as large a loss for as long a time as it can. New Jersey's policy of denying justice by delaying it violates the most elementary standards of due process. Such dilatory tactics or even cries of unavoidable delay cannot be allowed to seriously impair substantive rights, much less those protected by the Constitution.[5]

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[4] For example, though the FAIRA taxes and assessments have now been in effect for almost two years, Allstate's August, 1990 rate filing, which seeks to cover those costs, is still mired in pre-hearing discovery, with the Commissioner continually making demands which Allstate finds oppressive and, in some instances, impossible to satisfy. Similarly, the record of the hearing on Allstate's October, 1990 filing for its other rate needs was not closed to post-hearing submissions until January 31, 1992. Under statutory timetables, a decision by the Commissioner on the latter filing is therefore not due until approximately May 1, 1992, over 18 months after the rate filing.

[5] *See, e.g., Smith v. Illinois Bell Telephone Co.*, 270 U.S. 587, 591 (1926) ("[p]roperty may be as effectively taken by long-continued and unreasonable delay in putting an end to confiscatory rates as by an express affirmance of them"); *Cutler v. Hayes*, 818 F.2d 879, 898 (D.C. Cir. 1987) ("if an agency's failure to proceed expeditiously will result in harm or substantial nullification of a right conferred by statute, 'the courts must act to make certain that what can be done is done' "); *Vitek Electronics, Inc. v. N.L.R.B.*, 763 F.2d 561, 568 (3d Cir. 1985)

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The Commissioner erects a straw man by asserting that Allstate demands "an absolute right to protection against regulatory lag" in adjusting the rates Allstate is permitted to charge. (Br. in Opp. 13) He cites cases saying that "a certain degree of delay in the rate adjustment process is simply a 'necessary incident of rate regulation' which is an element of the risk associated with investment in a rate regulated business." (Br. in Opp. 13)

But the Commissioner's caselaw concerns rate adjustment to take account of changing economic conditions. There, a regulated party can reasonably be expected to monitor conditions, anticipate the need for rate adjustment sometime before the need becomes acute, and request relief when there is still a reasonable period to process the request before the existing rates will impose substantial and irreparable harm.

Here, by contrast, the need for such relief stems from a new regulatory requirement, *so the State itself is responsible both for creating the rate inadequacy and for preventing rate adjustments*. This sort of regulatory lag is *not* an inherent risk of the regulated business. Rather, it is a loophole which could allow deliberate and unpreventable confiscation. Accordingly, preliminary judicial review *must* be available before implementation of a new requirement if a prima facie case of confiscation is presented. (Future cases can consider whether some similar requirement applies to cases where regulatory lag delays rate adjustments necessary to respond to changes external to the regulatory system.)

In any event, Allstate emphasizes that it is *not* demanding *absolute* protection against the effects of regulatory lag in rate adjustment. A full rate proceeding need not be completed before new regulatory requirements can

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(refusing to remand a case for further administrative hearings because administrative delay might frustrate substantive rights).

be imposed. Allstate claims only the right to *preliminary* judicial review of the rate impact and *provisional* rate relief (subject to refund) if appropriate to avoid an unjustified risk of irreparable confiscatory impact. Such protection is extended in other circumstances where State action threatens irreparable harm to constitutional rights. It is also required here.[6]

CONCLUSION

For all the reasons set forth herein and in the Petition, this Court should grant a writ of certiorari.

Respectfully submitted,

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[6] The Commissioner also suggests (Br. in Opp. 12) that the pendency of proceedings seeking a rate increase means that Allstate's claim is not yet ripe. But, unlike the cases the Commissioner cites, this is not a case where existence of a taking depends on what use of realty will be permitted, while further administrative proceedings are necessary to determine what uses are permissible. Here, the order requiring Allstate to employ its property to insure depopulation risks is a per se taking. (Pet. 22-23) And, unless another order intervenes, Allstate must soon insure depopulation risks at prima facie inadequate rates; the resulting loss cannot be recovered through future charges.

ORDER NO.: A91-344

STATE OF NEW JERSEY
DEPARTMENT OF INSURANCE

IN THE MATTER OF THE	)	
DECEMBER 4, 1991 INTERIM	)	DECISION
RATE FILING BY THE MARKET	)	AND
TRANSITION FACILITY OF	)	ORDER
NEW JERSEY	)	

This matter has come before the Commissioner of Insurance (Commissioner) pursuant to: *N.J.S.A.* 17:1C-6, 17:33B-11; the decision of the Superior Court of New Jersey, Appellate Division, *In the Matter of the Commissioner of Insurance's May 10, 1991 Orders Regarding the January 17, 1991 Rate Filing by the Market Transition Facility of New Jersey,* (Docket No. A-4634-90T5, decided November 19, 1991) (hereinafter cited as *In re: Rate Filing by MTF*); and all powers expressed or implied therein; and upon the filing for an interim rate increase submitted by R.T. Haskins, Special Deputy Commissioner and Chief Operating Officer of the Market Transition Facility of New Jersey (MTF).

The MTF was created by statute as a mechanism to provide residual market automobile insurance coverage to bridge the gap between coverage provided through the New Jersey Automobile Full Insurance Underwriting Association (JUA) and a new assigned risk plan. *N.J.S.A.* 17:33B-11. Its creation was included among the comprehensive reforms to personal automobile insurance set forth in the Fair Automobile Insurance Reform Act of 1990, P.L. 1990 c.8 (*N.J.S.A.* 17:33B-1 et seq.) (FAIR Act). The MTF is to arrange for the issuance and renewal of

automobile insurance policies to those who cannot obtain coverage through normal market channels for the period from October 1, 1990 through September 30, 1992, after which it will be supplanted by an assigned risk plan to be created pursuant to *N.J.S.A.* 17:29D-1.

Initially, the rates charged by the MTF were based on those of its predecessor, the JUA, pursuant to *N.J.S.A.* 17:33B-11c(2). These rates had been raised approximately 10.3% effective October 1, 1990. On January 17, 1991 the MTF made a filing that requested higher rates. This request for increased rates was granted in part by the Commissioner by Order No. A91-212, issued May 10, 1991, to be effective for policies issued and renewed on and after June 15, 1991. Contemporaneously, the Commissioner issued Order No. A91-211, which denied an application by Allstate Insurance Company (Allstate), a personal automobile insurer with a significant share of the market, to participate in the MTF's rate change proceedings.

Allstate appealed both Orders to the Superior Court, Appellate Division, which issued its decision November 19, 1991. *In re: Rate Filing by MTF,* supra. The Court reversed the Order excluding Allstate from the MTF rate setting process finding that the Commissioner was obligated to establish procedures for the fixing of MTF rates which provided interested parties with an opportunity to participate. It directed the Commissioner to take immediate action to set proper MTF rates and stated: "We order the Commissioner to meet with representatives of interested parties within 15 days of this opinion to fix a manner and a time schedule for the accomplishment of

the purposes identified in this opinion." *In re: Rate Filing by MTF,* slip opinion at 23.

On November 25, 1991, the Commissioner issued Bulletin 91-20 which set the meeting for December 4, 1991. On November 26, 1991, the Commissioner issued Bulletin 91-21 which included two documents for discussion at the December 4, 1991 meeting as follows:

1. A document entitled "Rate Proposal Procedures for the MTF" which was proposed as an amendment to the MTF Plan of Operation; and

2. A second document entitled "Interim Rate Proposal Procedures for the MTF," which was intended to respond promptly to the Court's directive.

On December 4, 1991, Special Deputy Commissioner Haskins filed on behalf of the MTF an application for an interim rate increase, which is the subject of this Decision and Order. The MTF's interim rate filing was announced at the December 4, 1991 meeting of interested parties (Transcript, p.8) and copies were distributed to those attending. In announcing the interim rate increase filing, Special Deputy Commissioner Haskins noted that preliminary data indicated an MTF deficit of approximately $300 million for its first year of operation (Transcript, p. 11).

In discussing the proposed interim rate increase at the December 4 meeting, Special Deputy Commissioner Haskins reported that the application was made based upon preliminary data which estimated a required rate increase in the range from 15 to 45 percent. (Transcript, p. 11). He noted that the data was incomplete in that it did

not include any information for September 1991, and did not include complete data for the calculation of "incurred but not reported" (IBNR) losses. (Transcript, pp. 11-12). The interim rate filing requested a 15 percent overall increase, at the low end of the range, which was to be followed by an additional rate increase application to meet the MTF's ultimate rate need. This additional rate increase application would be filed pursuant to the procedures proposed for the MTF Plan of Operation as soon as complete data were available later this month. Special Deputy Commissioner Haskins reported that the interim rate change proposal, to be followed by a further request based on complete data, was supported by a majority of the members of the MTF Advisory Committee. (Transcript, p.13).

The interim rate increase application consists of a cover letter summarizing the requested increase, a rate proposal consisting of five pages (including exhibits) and a Report of Rate Level Indication Analysis from O'Neil Consulting Services, the MTF's consulting actuary dated December 3, 1991 (OCS Report). The application proposes a 22 percent increase on liability coverages, which will result in an overall revenue increase of 15 percent for the MTF.

Several representatives of interested parties commented at the December 4, 1991 meeting. Lauren Townsend, representing New Jersey Citizen Action (a consumer coalition) urged that MTF rate change procedures provide for public hearings be held at times more accessible for New Jersey drivers, and that MTF rate applications be subjected to scrutiny by actuaries independent of the insurance industry. (Transcript, pp.42-45). Martin Brown,

representing State Farm Mutual Automobile Insurance Company (State Farm) stated that State Farm will file written comments on the technical aspects of the procedures and urged that the interim rates be implemented as soon as possible. State Farm further urged that MTF financial information be made available as promptly as possible, noting that State Farm's share of the market may make it responsible for a significant amount of any deficit. State Farm further urged that the Department should consider promulgation of administrative rules for the retirement of that debt through a recoupment mechanism, and not necessarily through a loading into MTF rates. (Transcript, pp. 45-47).

Mark Allaben, a member of the MTF Advisory Committee representing Travelers Insurance Companies, stated his support for the interim rate increase as "a small, good step forward to getting the MTF back to a break even position." (Transcript, pp. 47-48).

David Snyder, representing the American Insurance Association (AIA), commented on the significance of the expected MTF deficit, and on the importance of knowing a final date for a decision on the proposed rate change. Secondly, he noted that it was important to determine how IBNR losses are dealt with in the filing *because they can account for as much as* one third of ultimate losses. He further indicated that attempting to establish rates without IBNR would "violate every conceivable principle of actuarial science." He also urged that the books of the MTF be open to interested insurers and members of the public. AIA further requested that the rate filing include "some explanation of how the companies will be able to recover" the deficit.

Steve Carrellas, representing the National Motorist Association, requested that the procedures for reviewing MTF rate proposals include additional time for written public comments and a process for obtaining documents. He further expressed his concern that the drivers remaining in the residual market would be responsible for payment of any deficit already accrued. (Transcript, pp. 51-55).

Ed McCool, Executive Director of New Jersey Common Cause, inquired about the role of the Public Advocate is reviewing MTF rates. He urged that any MTF rate change proposal consider the expected effects of cost savings under the FAIR Act and urged that "good drivers" in the MTF (that is, drivers with no accrued automobile insurance eligibility points, see *N.J.A.C.* 11:3-34) be spared any rate increase. He suggested that any increase in MTF rates be delayed until after April 1, 1992 when eligible persons could freely obtain automobile insurance in the voluntary market. (Transcript, pp. 59-73).

Larry Johnson, representing The Chubb Group of Insurance Companies (Chubb) commented that Chubb's actuarial consultant had estimated the existing MTF deficit in excess of $450 million, and that an additional $400 million will accrue over the course of the MTF's life. He stated that any increase granted should be enough to cover the entire MTF deficit, including the deficit already accrued. He further commented that Chubb had difficulty in understanding how any adequate rate can be determined, even on an interim basis, which does not include IBNR. He further urged that the final rate increase be determined as quickly as possible. (Transcript. pp. 73-79).

As set forth in the "Interim Rate Proposal Procedures for the MTF," and announced at the December 4 meeting (Transcript, p. 79) interested members of the public were provided an additional seven days to submit written comments to the Commissioner on the proposed interim rate increase. This was extended to nine days to accommodate the receipt of late and illegible-as-telecopied comments in light of some commenters' complaints about the brevity of the comment period. Twelve written comments were received representing the views of seven insurance companies, an insurance trade association, a producer trade association, two consumer organizations and the Division of Rate Counsel, Department of the Public Advocate (Public Advocate). The substance of these various comments are discussed further below.

The MTF proposes an interim rate increase of 22 percent on liability coverages (11.2% on bodily injury liability and uninsured/underinsured motorists: 5.4% on property damage liability; and 70.4% on personal injury protection) resulting in a 15 percent overall increase in revenues to the MTF. The proposed interim increase would be effective January 15, 1992.

The OCS Report dated December 3, 1991, which accompanied the application, found the maximum possible range of the MTF's indicated rate level need from plus 15% to plus 50%. It noted that the maximum probable range was from plus 24% to plus 42% with the most probable result at the mid-point of the range, plus 32%, and with the probabilities tapering to 0% at each end of the range. The OCS Report further cautioned that rates less than the probable range would be actuarially unsound and likely to result in a deficit in the MTF.

The OCS Report sets forth certain conditions and limitations on the data and analysis it contains. First, the OCS Report noted that it was prepared on an expedited basis using methodologies which "contained assumptions and limitations which might be more explicitly considered in a more detailed study." These included: calculations assuming the MTF was an on-going operation; no adjustment to provide for collection of the required rate despite an incomplete policy term; no consideration for recoupment of possible past losses; no consideration in the calculation of investment income for the fact that funds may not be available for investment if required to be used to pay prior losses; no evaluation of the effect of the potential changes in the size or mix of the MTF book of business; no adjustment for distortions due to start-up; earned premium at current rates (EPCR) calculated at full value based on the 18.6% rate increase effective June 15, 1991, despite the fact that the amount expected was not realized; start-up costs not explicitly included in the calculation; and IBNR estimated without a detailed study.

Additionally, a review of the filing indicates that a combination of data sources and judgment was relied upon to select trend amounts because of the lack of reliable trend data. Although MTF costs consist primarily of fees paid to the servicing carriers in accordance with contracts, the method of trending expenses was applied in lieu of projecting expenses through calculation by the underlying parameters. In the absence of an IBNR study, the quarterly payout pattern of losses and allocated loss adjustment expenses was adopted from a July 12, 1991 draft financial report, which pattern, the OCS Report stated, appeared to be too short. Investment income was

estimated based upon an interest rate of 5%, although this interest rate is significantly lower than the interest rate normally used by the Department for automobile insurance rate making purposes. (See *N.J.A.C.* 11:3-16.10(c)). No estimate was provided on the effect of cost-saving and cost containment provisions of the FAIR Act although this information was requested. Finally, it must be noted that much of the data used in the filing was originally derived from the operation of the JUA. At the December 4 meeting Neil Pearson, General Manager of the MTF, described the past and continuing efforts to improve MTF operational efficiency by reducing and controlling costs and expenses. (Transcript, pp. 23-39.) One particular program to validate use classification may result in an additional $10 million in premium. (Transcript, pp. 30-31.)

Of those who submitted written comments on the interim rate increase proposal, the Independent Insurance Agents of New Jersey (IIA), a producer trade association, supported the interim rate increase as proposed, and urged that "any additional rate increase necessary to operate the MTF at a fully adequate, self-funded rate level be implemented as quickly as possible." IAA [sic] also stressed the importance of revising the MTF rate structure to provide auto insurance purchasers with an incentive to seek coverage in the voluntary market. All of the actuarial commenters from both the industry and the Public Advocate addressed the acknowledged limitations of the OCS Report. Their comments and recommendations are set forth below.

The MTF Actuarial Committee, a subcommittee of the MTF Advisory Committee, recommended a 39.4% rate

increase. Although its analysis is not clear, these commenters apparently adjusted the OCS Report's possible range from 15 – 50% to 21 – 58% based upon the following: adjusted for the actual results of the June, 1991 rate increase by adjusting EPCR; adjusted estimated investment income for prior losses; and made higher loss trend selections, although the specific selections were not set forth in the comment. Their recommendation is the apparent mid-point of the possible range.

Selective Insurance Group recommended a 32% interim increase, the mid-point of the OCS Report's possible range. State Farm Insurance Companies commented that the 15% overall rate increase "was not nearly enough," noting that the OCS Report stated that the most probable range was from 24% to 42%, which range it suggested should be adjusted upward by 10% to reflect the following: properly adjusted EPCR; understated investment income; start-up costs; a different, higher trend (not provided) for symbol drift/model year rating which considers the recent decline in new car sales; and another unstated factor that would consider the deteriorating effect of depopulation on the MTF book of business. It recommended a rate increase of at least 32.7%.

Travelers Insurance Companies recommended a 47.2% increase based upon the midpoint of the OCS Report's most probable range (32.7%); correction of EPCR (plus 5.4%); correction of investment income (plus 2.0%); inclusion of FAIR Act savings (minus 1.7%); correction of loss trends (plus 5.6%); correction of expense trends (plus 0.7%). The American Insurance Association recommended an increase within the OCS Report's most credible range of 24 to 42 percent. The Hanover Insurance

Company made no specific recommendations, but provided recommendations and comments that addressed the limitations of the OCS Report. It concluded: "the proposed interim rate level changes is a positive first step yet it . . . falls short of the true rate need."

Allstate Insurance Company asserted that the Department was violating the holding of in *In re: Rate Filing by the MTF* and was acting arbitrarily, capriciously and unreasonably by proposing a two-step process for the adjustment of rates to fund the MTF at the level necessary. Without making a specific recommendation, it stated that the rate increase needed is much higher than the range indicated in the OCS Report, based upon needed adjustments to EPCR, overly optimistic estimates of investment income and other unstated, allegedly faulty assumptions.

Chubb Group of Insurance Companies recommended a 46% increase to be effective January 1, 1992, based upon a study by an actuarial consulting firm which it attached to its comments. It described adjustments to four limitations in the OCS Report: adjustment to investment income; impact of start-up costs; adjustment to EPCR (failure of MTF to realize full effect of previous 18.6% rate increase); and lack of a detailed IBNR study. It stated that its actuarial consultant estimated that the effect of IBNR raises the OCS Report estimated maximum probable range an additional 9%.

From an opposing view, the Public Advocate commented that the 5% interest rate used in the OCS Report's investment income calculation results in investment

income on earned reserves being understated, and suggested the use of an interest rate in excess of 8%. Secondly, the Public Advocate stated that the cash flow patterns employed in the OCS Report also understated expected investment income. Thirdly, the Public Advocate noted the lack of attempt to quantify savings from various FAIR Act reforms; specifically, it urged a 25% reduction in uninsured motorists coverage. It noted that in a recent rate case the Commissioner had found it appropriate to adjust the rate increase granted for anticipated FAIR Act savings. Fourthly, the Public Advocate commented that the loss development factor (including the IBNR factor) should be increased. Fifthly, the Public Advocate commented that from 1988 through 1990, JUA IBNR reserves have been excessive by a total of $665 million (based upon the JUA Annual Statement) and that IBNR should be a smaller component of the MTF's losses compared to the JUA because of the efforts of the MTF management to reduce costs and expenses. Sixthly, the Public Advocate commented that the procedure used in the OCS Report double counts personal injury protection losses in excess of $75,000, which are reimbursed by the Unsatisfied Claim and Judgment Fund. New Jersey Citizen Action also commented that the MTF interim rate filing failed to consider provisions of the FAIR Act that will reduce costs. All of these adjustments would serve to reduce the MTF's indicated rate level need, although neither the Public Advocate nor New Jersey Citizen Action recommended a specific figure.

In addition to specific comments on the actuarial data, methodology and assumptions set forth in the OCS

Report, several of the commenters made general comments. The Public Advocate, consumer group commenters and some industry commenters objected to the lack of time to make an adequate review and analysis of the filing. Allstate and other commenters requested access to the data used to develop the filing. New Jersey Common Cause urged that the comment period be extended to 20 days, followed by a public hearing and an additional 3 days for additional written comments as is proposed for inclusion in the MTF Plan of Operation. The Public Advocate noted that the short time for review and analysis was further hampered by the limited data provided in the filing, noting the difference in the data included in the filing from normal personal automobile rate filings, which are accompanied by data set forth in *N.J.A.C.* 11:3-16. Additionally, New Jersey Common Cause urged that no part of an MTF rate increase should be based upon any deficit that is the result of the industry's failure to meet depopulation quotas required by *N.J.S.A.* 17:33-11. It further urged that no increase at all should be granted until April 1, 1992, when MTF insureds have an opportunity to seek coverage in the voluntary market if they are "eligible persons" as provided in *N.J.S.A.* 17:33B-15 and *N.J.A.C.* 11:3-34. New Jersey Citizen Action commented that any MTF rate increase should be denied to the extent that the rate increase is unnecessary to allow insurers to earn a fair rate of return on their business as a whole, considering that the MTF losses would be allocated to MTF member insurers. It further commented that the proposed MTF rate increase should be denied to the extent that it charges policyholders for excessive MTF

expenses, such as commissions and servicing carrier fees that exceed a reasonable level.

As described in Bulletin No. 91-21, the "Interim Rate Proposal Procedures for the MTF" were intended to respond promptly to the decision of the Court in *In re: Rate Filing by MTF*, supra. The Court there did not direct an interim rate increase; rather it directed the Commissioner to meet with interested parties and proceed promptly to establish procedures to set MTF rates at an appropriate level; *N.J.S.A.* 17:33B-11c(3) provides that such procedures are to be part of the MTF Plan of Operation.

Pending the establishment of those procedures as part of the MTF Plan of Operation, and the prompt filing and determination of adequate MTF rates, the MTF has requested an interim rate increase. Generally, personal lines insurance rates are adjusted only after the analysis and review of a detailed rate filing that demonstrates clearly the reasons for the adjustment. See *N.J.S.A.* 17:29A-14. Historically, this has also been true for setting rates in the residual market. For example, JUA rates were those rates used by the rating bureau representing the greatest number of insurers (see *N.J.S.A.* 17:30E-13) and rate changes requiring prior approval of the Commissioner were thus subject to the processes set forth in *N.J.S.A.* 17:29A-14. Since its creation, the Public Advocate's Division of Rate Counsel has participated in the process to protect the public interest. *N.J.S.A.* 52:27E-18. Thus when the process for fixing insurance rates involves public participation, the decision to fix new rates generally awaits the outcome of that process.

The MTF, however, is a transitional facility to which *N.J.S.A.* 17:29A-14 does not apply. It was created to serve its legislatively mandated purpose for a limited life. Its rates along with all other aspects of its operation are the responsibility of the Commissioner, although no instruction was provided in *N.J.S.A.* 17:33B-11 about how this responsibility was to be executed except that procedures be set forth in the MTF Plan of Operation. The Court in *In re: Rate Filing by MTF* found that the lack of such procedures was a deficiency immediately to be cured. In doing so, the Court noted that rate increases are prospective only and that past losses from inadequate rates can never be made up. Under the present emergent circumstances, I have determined to provide for an immediate, interim rate increase after opportunity, albeit brief, for interested parties to provide comment, which shall be followed immediately by more studied procedures to fix MTF rates at their proper level in accordance with procedures provided by an amendment to the MTF Plan of Operation.

Although interim rate changes pending the outcome of deliberative processes are generally disfavored, the Commissioner has, however, established interim rates in the past under extraordinary circumstances. Most notably, in *New Jersey State AFL-CIO v. Bryant*, 55 *N.J.* 171 (1969) the Supreme Court affirmed the Commissioner's decision to approve increased rates for an applicant that was in serious financial distress pending a final determination on its application for permanent new rates. There, in a hearing commenced but not concluded, evidence showed that the applicant had a substantial and

growing deficit; was technically insolvent; and was operating without required minimum reserves. 55 *N.J.* at 174. All parties to the proceedings, including counsel appointed to represent the public interest, acknowledged that some increase was necessary pending a final determination. The interim rate increase was fixed at an amount that could not, in good faith, be disputed by anyone and to which all parties to the proceedings agreed. See 55 *N.J.* at 175.

In the present matter, the interim MTF rate increase application is intended to respond promptly to the Court's directive to undertake immediate action that will ameliorate the accrual of a deficit in the MTF, while also proceeding promptly to fix adequate MTF rates in accordance with proper procedures established in the MTF Plan of Operation. Therefore, I am approving an increase in MTF rates in an amount that approximates the amount requested by the MTF, the low point on the possible range of a permanent increase. In order to accommodate the allocation of the increase as set forth further below, I have been advised that the expected revenue impact is a 14.9% increase. Without question, this amount of increase can be justified regardless of the actuarial assumptions and methodology used, and regardless of what the complete and final data shows when the permanent rate increase filing is made and determined in a more deliberative, analytical and open process.

In approving an interim rate increase for the MTF, I am not unmindful of the issues raised by the comments to the filing. The actuarial commenters raised many excellent points in favor of a higher (and in some cases, a lower) rate adjustment. Commenters requested a better

opportunity to review the data upon which the filing was based. These points should be thoroughly, though expeditiously, explored. Resolution of these issues, however, should occur in connection with the determination of a fully adequate rate for the MTF, not in the context of proceedings to provide an interim rate increase in the present emergent circumstances.

Similarly, I am not unmindful of the comments of those who oppose any MTF rate increase on an interim basis. I recognize that the time to review the filing, and to present comments, has been extremely constrained. Such is the nature of proceedings to fix interim rates. With regard to the comment that no MTF rate increase granted be effective until April 1, 1992, when all eligible persons as defined in *N.J.S.A* 17:33B-15 may be insured in the voluntary market, I find that such an action would be inconsistent with the directive of the Court in its decision of *In re: Rate Filing by MTF.* Moreover, it would be inconsistent with my own decision, set forth in Order No. A91-212, in which I indicated that I would respond appropriately upon clear indications that MTF rates were deficient.

Finally, I acknowledge the comment that no MTF interim rate increase should be approved that compensates for some insurers' deficiencies to depopulate the residual market as required by *N.J.S.A* 17:33B-11c(5). Although preliminary figures indicate that this failure may be responsible for as much as $147 million of the projected MTF deficit, I find that there is no real, good faith dispute that an increase in MTF rates in the amount approved is warranted at this time. All of these issues, as well as those raised by the industry commenters, may be

considered in connection with the permanent increase for which application will soon be made.

With regard to the proposed allocation of the rate increase to liability coverages, however, I find that public policy militates against MTF rates being raised in that fashion. The previous MTF rate increase effective June 15, 1991, increased the rates of only those MTF insureds with at-fault accidents or automobile insurance eligibility points. Persons with neither continued to pay the same rates as were established for the JUA as of October 1, 1990. The previous MTF rate increase fell most heavily on those MTF insureds who were within the second tier of the JUA/MTF rate structure.

At the time the decision was made to allocate the June 15, 1991 rate increase to drivers with at-fault accidents and automobile insurance eligibility points, it appeared that more than half of the drivers insured by the MTF would be subject to the higher rates because of their driving history record. Moreover it appeared likely that drivers with clean records would be the first to be absorbed into the voluntary market, further increasing the proportion of MTF insureds to which the increase would apply. The preliminary information proved not to reflect current conditions, however, and the latest information shows that over 60% of MTF insureds have clean driving records.

In some instances, present MTF rates for drivers without at-fault accidents or automobile insurance eligibility points remain less than for similar drivers in the voluntary market. A residual market mechanism should not routinely provide rates less than those charged to

insureds in the voluntary market. As one commenter specifically noted, maintaining lower rates in the MTF makes its depopulation more difficult as it creates a disincentive for eligible insureds to seek coverage from a voluntary market insurer.

For these reasons, I have determined that rather than approve the increase as proposed (allocated to the liability coverages as set forth in the MTF interim rate filing) the MTF rate increase shall be the same percentage for both the liability and physical damage coverages (excluding personal injury protection, uninsured/underinsured motorists and expense fees) and allocated by auto insurance eligibility point level as set forth in the Appendix to this Decision and Order. I find that this allocation of the increase will better serve the public policy purposes identified above, and, I hope, speed depopulation of the MTF, while providing interim rate relief approximately equal to the amount requested.

In approving this interim rate increase for the MTF, I reiterate my commitment to move expeditiously to provide fully adequate rates in the MTF as promptly as possible. I note that the comment period for the Rate Proposal Procedures for the MTF, proposed as an amendment to the MTF Plan of Operation, has ended. I expect that appropriate procedures will be promptly established in the MTF Plan of Operation, and that a proposal for rate adjustment for the MTF to yield fully adequate rates will be submitted immediately thereafter. This permanent rate proposal will be promptly addressed pursuant to procedures as established.

Now, therefore

IT IS on this 20th day of December, 1991

ORDERED that:

1. The MTF request for an interim rate increase is approved, as modified, in the amount of 14.9 percent;

2. The MTF request for the overall increase to be allocated to all liability coverages, as set forth in its December 4, 1991 filing is disapproved;

3. The approved overall increase shall be allocated to both liability and physical damage coverages and allocated by auto insurance eligibility point level as set forth in the Appendix to this Decision and Order; and

4. The MTF rates as modified in this Decision and Order shall be effective for new and renewal policies on and after January 15, 1992.

This Decision and Order constitutes a final agency decision and is effective immediately. Any appeals from this Decision and Order shall be filed with the Clerk of the Superior Court, Appellate Division, within 45 days of the date hereof, pursuant to the Rules Governing the Courts of the State of New Jersey.

12/20/91	/s/ Samuel F. Fortunato
Date	Samuel F. Fortunato
	Commissioner

DB42/ORDERS

APPENDIX

Auto Insurance Eligibility Points	Percent of Risks	Average Old Premium	Average New Premium	Percent Increase
0	61.30%	$ 763	$ 986	29.2%
1	1.30	1,011	1,041	3.0
2	7.30	864	1,051	21.6
3	2.50	1,061	1,061	0.0
4	8.20	1,277	1,277	0.0
5	7.10	1,581	1,581	0.0
6	1.50	1,342	1,342	0.0
7	1.40	1,689	1,689	0.0
8	1.30	1,529	1,529	0.0
9	2.00	1,768	1,768	0.0
10	1.30	2,201	2,201	0.0
11	0.80	1,510	1,510	0.0
12	0.80	1,987	1,987	0.0
13	0.40	1,664	1,664	0.0
14	0.80	1,987	1,987	0.0
15	0.40	2,621	2,621	0.0
16+	1.60	2,143	2,143	0.0
TOTALS	100.00%	$1,010	$1,161	14.9%

Approximate number of insureds affected by increase: 419,400

Estimated total increase in MTF revenue: $90.4 million

DB42A/ORDERS

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IN THE MATTER OF	)	SUPERIOR COURT OF
THE COMMISSIONER	)	NEW JERSEY
OF INSURANCE'S	)	APPELLATE DIVISION
DECEMBER 20, 1991	)	DOCKET NO. A-
ORDER REGARDING THE	)	
DECEMBER 4, 1991 RATE	)	**NOTICE OF APPEAL**
FILING BY THE MARKET	)	
TRANSITION FACILITY	)	On Appeal from a Final
OF NEW JERSEY	)	Decision and Order of
	)	The Commissioner of the
	)	Department of Insurance

TO: Edward Dauber
Acting Attorney General of the State of New Jersey
By: Joseph L. Yannotti, D.A.G.
Richard J. Hughes Justice Complex, CN-112
Trenton, New Jersey 08625
Attorneys for New Jersey Department of Insurance and Commissioner of Insurance

Hon. Samuel Fortunato
Commissioner of Insurance
20 W. State Street, CN-325
Trenton, New Jersey 08625-0325

Theresa D. Brown
Department of the Public Advocate
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
Attorneys for the Public Advocate

The attached Counsel List

PLEASE TAKE NOTICE THAT Allstate Insurance Company ("Allstate"), appeals to the Superior Court of New Jersey, Appellate Division, from an Order of the Commissioner of Insurance (the "Commissioner") dated December 20, 1991, but not received until December 23, 1991, granting the Market Transition Facility ("MTF") of New Jersey a 14.9% interim rate increase, which is a final agency action pursuant to *R.* 2:2-3. Allstate appeals from this Order for the following reasons:

(1) The MTF rate Order does not provide for a rate increase sufficient to cover the cost of insuring the MTF population, and is therefore contrary to law; and

(2) The Commissioner acted arbitrarily and capriciously in issuing an MTF rate Order which grants the MTF only a small portion of the necessary rate relief and which disregards the recommendations of the Commissioner's own actuarial consultants.

A copy of the Order appealed from is attached as Exhibit "A" to the Case Information Statement submitted herewith.

Smith, Stratton, Wise,
Heher & Brennan
Attorneys for Appellant
Allstate Insurance Company

By: /s/ Penny A. Bennett
Penny A. Bennett

Of Counsel:

Duane C. Quaini
William T. Barker
Steven Levy
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8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8000

Princeton, NJ
December 27 , 1991

ORDER ON EMERGENT APPLICATION

I/M/O COMMISSIONER OF INSURANCE'S DECEMBER 20, 1991 ORDER REGARDING THE DECEMBER 4, 1991 INTERIM RATE FILING BY THE MARKET TRANSITION FACILITY OF NEW JERSEY	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-2141-91T5 MOTION NO. M-2422-91 BEFORE PART: C JUDGES: PETRELLA COHEN STEIN

EMERGENT APPLICATION FILED: 12-30-91 BY: THOMAS HASTINGS, ESQ., MICHAEL R. COLE, ESQ., STEVEN M. LEVY, ESQ.

ANSWER(S) FILED: 12-30-91 BY: N.J. ATTORNEY GENERAL; ELMER M. MATTHEWS, ESQ.
APPEARANCE ONLY: THERESA D. BROWN, ESQ.
DATE ARGUED: 12-30-91

ORDER

(Filed Jan. 8, 1992)

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 30TH DAY OF DECEMBER, 1991, HEREBY ORDERED AS FOLLOWS:

	GRANTED	DENIED	OTHER
EMERGENT APPLICATION FOR EXPEDITE APPEAL AND PRELIMINARY RELIEF PENDING DISPOSITION OF APPEAL		X	

SUPPLEMENTAL:

Allstate and Chubb have appealed the December 4, 1991 interim rate order of the Commissioner of Insurance for the Market Transition Facility. They moved on an emergent basis for an acceleration of the appeal proceedings, and for an interim rate order from this Court requiring the Commissioner to set higher MTF rates pending the appeal.

We deny the application for an interim rate order. We do so out of doubts as to our authority to make such an order, and out of an absence of a record before us to show the quantitative impact on the appellants or the public of the grant or denial of such relief, either as writers of MTF depopulation business at MTF rates or as potential sharers of an MTF deficit.

We also deny the application for acceleration. We do so because the Commissioner is complying with our November 19 mandate, even to the extent of setting interim rates while considering a permanent rate, because the interim rate is likely to be in effect, according to the Commissioner's timetable, for only several weeks, and thus the matter will become moot even as we are

considering it. We base this ruling on representations from the Commissioner about the pace of future proceedings.

FOR THE COURT:

/s/ Richard S. Cohen
RICHARD S. COHEN, J.A.D.

MTF **Market Transition Facility of New Jersey**
[logo] 293 Eisenhower Parkway,
Livingston, New Jersey 07039
(201) 533-1165

January 24, 1992

Hon. Samuel F. Fortunato
Commissioner of Insurance
NJ Department of Insurance
20 West State Street
CN 325 12th Floor
Trenton, NJ 08625

Re: Market Transition Facility of New Jersey
Final Rate Proposal.

Dear Commissioner Fortunato:

The Market Transition Facility, pursuant to the recommendation of the Advisory Committee, is hereby submitting a rate change proposal. It is intended that this rate change will allow the MTF to operate on a break-even basis prospectively from the date of implementation, i.e. April 1, 1992.

Included in this proposal is the actuarial analysis from the MTF's consulting actuary, O'Neil Consulting Services, that will support the requested overall rate increase of 16.8%. It should be noted, however, that annual premiums will not increase by this percent due to the fact that this increase will only apply to those policies, new and renewal, incepting between April 1, 1992 and September 30, 1992, these dates inclusive.

Finally, it must also be pointed out that as of September 30, 1991, the MTF's share of the State's private passenger

automobile market should have been 25.0%; however, due to the failure of certain voluntary market insurers in meeting their depopulation quotas, the MTF has a share of 31.72%. From the data available, it is not clear whether the MTF's total loss ratio has increased or decreased due to this situation. Therefore, no such effect is utilized in this analysis.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

/s/ R. T. Haskins
R.T. HASKINS, CPCU, CLU
Special Deputy Commissioner

RTH/hm

cc: Jasper Jackson, Deputy Commissioner

FILING MEMORANDUM

New Jersey Market Transition Facility

The New Jersey Market Transition Facility retained the services of O'Neil Consulting Services to develop an estimate of its overall rate level needs. The results of that analysis are summarized in the attached report. It should be noted that the analysis includes a number of limitations as identified in the report.

The purpose of this memorandum is to propose a +16.8% overall rate level change effective April 1, 1992. It should be noted that this is a going-concern rate level effect. The

MTF will realize only about one half of the income associated with this amount because it ceases operations on September 30, 1992.

The proposed +16.8% rate level change would be distributed by coverage as indicated by the rate level calculations. The proposed changes by coverage are shown on the attached Exhibit A. No other distributional changes are proposed.

January 22, 1992

Report on Rate Level Requirements for the New Jersey Market Transition Facility

Prepared for the MTF by:
O'Neil Consulting Services
January 22, 1992

New Jersey Market Transition Facility
Report of Rate Level Indication Analysis

I. INTRODUCTION

O'Neil Consulting Services was retained by the New Jersey Market Transition Facility (MTF) to estimate its indicated rate level requirements. This report outlines the data, assumptions and methodologies underlying the requested calculation.

This report is an update of a report dated December 3, 1991 which used MTF data thru August, 1991. This study is based on the first full year of MTF experience, using data from the MTF's inception at October 1, 1990 thru September 30, 1991. This report was also prepared in an expedited time frame. However, some of the procedures which were previously modified or adapted from other studies were reviewed and adjusted as necessary. These areas are noted as applicable in this report.

This report is organized into the following sections: background, conditions and limitations, results, data, and assumptions and methodologies.

The underlying data and information included in this study were compiled as required by the DOI according to the Commissioner's latest amendment to the MTF plan of operation setting forth Rate Proposal Procedures. The MTF is specifically excluded from the provisions of N.J.A.C. 11:3-16.1.

II. BACKGROUND

The MTF was created by Section 88 of the FAIR Act and became operational on October 1, 1990. This operational date was coincident with the date after which the JUA (AFIUA) was prohibited by the FAIR Act from issuing or renewing automobile insurance policies. The MTF is a temporary market mechanism designed to facilitate the transition of "eligible" drivers, as defined in the FAIR Act and attending regulations, from the JUA to coverage in the voluntary market. The MTF has only a two year life span. Under the FAIR Act, the MTF was initially authorized to charge the JUA rates. On January 17, 1990, the MTF filed a request for an overall increase in rates with the Commissioner. On May 10, 1991, the Commissioner granted an overall 18.6% premium increase to the MTF, effective June 15, 1991. On December 4, 1991, the MTF filed for an overall 15.0% increase in rates. The Commissioner approved an overall 14.9% rate increase effective January 15, 1992.

III. CONDITIONS AND LIMITATIONS

The analysis herein was based on the data and information provided by the MTF. No independent audit or verification of the data/information was completed. To the extent such data/information was either inaccurate or incomplete, the results derived therefrom will also be inaccurate, incomplete, and/or biased. To the extent possible, areas of such deficiency were identified and discussed. Further, this analysis projects loss and expense costs into a prospective rating period. All such projections are estimates and may err due to various unforseeable [sic] contingent events. These include, for example, additional law changes, changes in regulation, or changes in policy/claim handling procedures.

Finally, as noted above, certain of the limitations present in the last study were adjusted for this study. However, it was not possible to address all of the limitations previously identified. The remaining limitations are listed below without explanation. Specifics of these limitations are discussed where applicable in this report.

1. All calculations were completed as if the MFT [sic] were an on-going operation. Trend periods, etc. are fully included for both income and outgo.

2. No adjustment was made to provide for the incomplete policy term available for collection of the required rate.

3. All calculations are prospective. No consideration was given to recoupment for possible past losses.

4. No attempt was made to quantify or evaluate potential changes in the size or mix of the MTF book of business.

5. No attempt was made to adjust the data for distortions due to start-up of the MTF such as the lag in earned premium.

Four of the limitations identified in the December 3, 1991 study have been eliminated in this report. They were: adjustment of the 18.6% rate level change to the realized amount, determination of IBNR from a detailed analysis of the required IBNR, adjustment of investment income due to use of cash to fund prior period losses, and disposition of the issue of start-up costs. These are discussed further in the following sections.

IV. RESULTS

The current analysis of the MTF rate level needs resulted in an overall indicated rate level change of 16.8%. Results by coverage are shown on Exhibits 1 and 2.

The effective date underlying the indicated rate level changes is 4/1/92. It should be noted that since the MTF ceases operations on 9/30/92, only about half of the required additional revenue will be realized prior to that time.

V. DATA

The underlying data were taken primarily from monthly summaries of operations provided to the MTF by AIPSO. The data are by policy year and accident year from inception of the MTF, October 1, 1990, thru September 30, 1991,

the first full year of MTF operation. Data elements provided were extensive and included, income items: written premium, earned premium, written DIP/DRDP, earned DIP/DRDP, and outgo items: paid loss, outstanding loss, UCJF recoveries, paid ale, directly reimbursable expenses, SIU expenses, claim service fees, non-claim service fees, and commissions written.

Data were also obtained from a variety of other sources. Administrative costs, premium taxes, and the expected UCJF assessment were estimated from the MTF Financial Statements.

VI. ASSUMPTIONS AND METHODOLOGY

The assumptions and methodology associated with each step of the calculation are described below.

A. Income Items

1. Written Premium

DIP/DRDP written premium was available only for all coverages combined. For purposes of determining the required rate level by coverage, DIP/DRDP written premium was apportioned to all coverages excluding PIP based on the proportion of each coverage's written premium to total written premium. This is a change from the last report wherein DIP/DRDP was allocated to the liability coverages only. This approach was revised because it was noted that the DIP/DRDP factors generate revenue for all coverages except PIP.

2. Earned Premium

Earned premium by coverage was taken from the AIPSO monthly statistical reports as equal to written minus unearned at the end of the period. At the last study, earned premium by coverage was estimated because neither earned nor unearned premium were available by coverage for the non-quarter ending month of that experience period (August). Earned DIP/DRDP was similarly calculated and then allocated to coverage in proportion to earned premium by coverage.

Subsequent to the last study, an overstatement in earned premium was discovered by the MTF in the amount of $33,144,215. Because the auditors were unable to provide the corrected earned premium by coverage, the error was allocated to coverage in proportion to the uncorrected earned premium by coverage.

3. Earned Premium at Current Rates/Premium Trend

Effective June 15, 1991, the MTF was granted an 18.6% premium increase in the form of the DRDP rating factors and increased flat dollar accident surcharges. Due to time constraints, for the last study, this increase was included at full value despite a dramatic difference between the proportion of clean/surcharged risks underlying the 18.6% and the actual proportion present in the MTF. Therefore, for this study, the 18.6% was reevaluated using the current distribution by DRDP point. This calculation resulted in an estimated realized prior premium increase of 12.3% instead of the 18.6%.

The factors utilized by the DRDP apply to all coverages except PIP while the flat dollar accident surcharges relate to all coverages. Accordingly, the effect of the 12.3% rate level change was apportioned to DRDP and the effect of the increased accident surcharges. This computation resulted in premium effects of 13.5% for all coverages except PIP and 5.1% for PIP. An on-level adjustment factor was developed using the parallelogram method and applied to all coverages. The on-level factors were 1.131 for all coverages except PIP and 1.049 for PIP.

The January 15, 1992 rate level change of 14.9% applied to all coverages except PIP and UM. The effective change by coverage other than PIP, was, therefore, 17.0% based on the distribution of earned premium by coverage. This amount was included in the on-level factors at full value.

Physical damage coverages were also adjusted to provide for model year rating and symbol drift. Due to time constraints at the last review, the factors developed in the Mercer draft report of July 12, 1991 were used. These were, 14.1% for comprehensive and 9.9% for collision. Since the last study, these data were reviewed using the data of a major New Jersey insurer, and found to be appropriate.

Due to start-up of the MTF operation, earned premium is probably somewhat understated relative to a going concern operation. No attempt was made to adjust for this observation.

4. Investment Income

Investment income was incorporated into the permissible loss ratio by applying a cash flow approach to the other income/expense items. This method and its various parameters is described in a later section. It was noted that actual investment earnings to date for the MTF have been only slightly above 2%. It is not clear why the MTF has not achieved a higher yield. However, discussions with the MTF representatives indicate that a higher yield of 5% is expected, given current market yields and the type of investments held by the MTF. The selected yield was, therefore, set at the expected level of 5% in accordance with the DOI Rate Proposal Procedures for the MTF as noted above. (The MTF is not subject to N.J.A.C. 11:3-16.10(a)8.)

At the last study it was observed that the investment income calculation did not anticipate the fact that some funds may not be available for investment if they must be used to pay prior period losses. Given the stated first year MTF deficit of about $375 million, it was assumed that about 25% of the second year written premium would be required to pay these prior period losses and would not be available for investment. Therefore, the value of investment income was estimated based on 75% of the new written premium.

5. Premium Installment Fees

The total amount of such fees thru September was $13.9 million according to the MTF preliminary financial statement. This amount was included as an add-on to the otherwise calculated on-level earned premium. It was

distributed to coverage in proportion to written premium.

B. Losses

1. Paid Loss, Outstanding Loss, IBNR

Paid loss was taken from the AIPSO reports for the first twelve months of the MTF operation. As for the last study, PIP was net of UCJF recoveries and comprehensive and collision were net of salvage and subrogation. IBNR was taken from a detailed IBNR study by OCS dated January 11, 1991.

2. Loss Trend

Since the last study, one additional quarter of New Jersey, New York, and Countrywide fast track data have become available. Also three additional months of CPI data have become available. These data and the previous selections were reviewed carefully as discussed below.

Because there have been numerous law changes over the last several years, the available New Jersey trend data often produce meaningless results. Therefore, a combination of data sources and judgment was relied on in selecting trend amounts. The data sources included Fast Track thru September, 1991 for New Jersey, New York (BI only), and Countrywide, various CPI cost indices, and data thru June, 1991 for internal ISO trend data for PD. The selected amounts are described by coverage below.

The internal trend data furnished by ISO for the MTF were thru June, 1991 for voluntary and residual market business combined and for residual market business

alone. These data have two basic inherent difficulties as follows: (1) ISO did not collect data for the AFIUA (residual market) for all carriers until second quarter 1989, (2) one of the servicing carriers (CSC) has not reported claim count information to ISO. The first difficulty distorts trend indications based on more than 5 points (from June, 1990 to June, 1991). Therefore, 5 point indications were calculated and reviewed. The second difficulty was eliminated by ISO's estimate of CSC claim counts. No independent review of these estimates was made. Given the limitations of these data, their resulting indicated trends were used only as a final reference in the selection process.

a. Bodily Injury

Because of the changes in the no-fault threshold over the last seven years, New Jersey BI Fast Track and internal trend data are not meaningful as a reference in selecting trends.

Other potential sources of data include Fast Track data from other states or countrywide and CPI data. Fast Track data from other states or countrywide are not particularly relevant because of different underlying laws, most importantly the no-fault threshold. New York does have the same verbal threshold as New Jersey. However, the New York threshold has been in place since 1978 while the New Jersey threshold has only been in place since 1989 and is optional rather than mandatory. Therefore, the current New York data are not directly applicable to New Jersey and must be reviewed with caution. Countrywide data are even less relevant to New Jersey because of

the mix of underlying laws, traffic patterns, claims consciousness differences, etc.

Nevertheless, all three data bases (NJ, NY, and CW) were reviewed and indicated trends were calculated. As expected, the New Jersey data were distorted displaying large negative pure premium indications. The countrywide data are more stable with frequencies around +2% to +4% and severities at around +6% to +7%. On the other hand, the New York data show low but stable severities at about 3.5% to 4% combined with rapidly increasing frequencies, now in the range of +8% to +10%. These results appear odd with severities well below current CPI indices. Given New York's comparatively low level of PIP benefits, a relatively high proportion of uncompensated medical costs could be expected to be found in the BI coverage. The high frequency changes suggest that the New York threshold has begun to erode. Given the recency of the introduction of the verbal threshold in New Jersey, a similar conclusion here would be unreasonable.

The CPI data indicate that costs are increasing at about 7% per year for services (specifically, 5.7% for Physician's Services and 8.4% for the Medical Care Cost Index) and at about 9% to 10% for hospital costs (specifically, 8.5% and 10.7% for Hospital Rooms and Outpatient Hospital, respectively) the total weighted CPI cost index is 7.6%.

All of the above factors and considerations were synthesized into a BI pure premium trend selection of 7.5%, just slightly above the 7.3% selection derived in the last study. This is consistent with the New York data adjusted to a basis prior to the apparent erosion of the verbal threshold. (For example, CW frequency and NY severity, both at

about +3.5% combine to about a 7% pure premium trend). It is also consistent with the latest CPI cost data and with the value contained in the prior Mercer report prepared for the MTF.

A summary of the indicated and selected trends trends [sic] is shown on Exhibit 4.

Given the number and kinds of law changes that have taken place over the last several years, the ISO trend data were not useful as support for the selected BI trend.

b. Property Damage

For property damage frequencies and severities, New Jersey and Countrywide Fast Track data were relied on. In addition, various CPI indices which relate to automobile repair labor and parts costs were referred to in order to temper and evaluate the reasonableness of the resultant selections.

New Jersey Fast Track data have been showing declining frequency *and* severity trends for the last two years, particularly the last year. There has been speculation that although there have been no direct coverage amendments to PD, that the changes in other coverages and other reforms, such as the surcharge plan, have caused these declines rather than a "real" decline in accidents or costs. Countrywide fast track data, however, mirror the changes observed in New Jersey, albeit, somewhat lagging behind the New Jersey experience. These data, therefore, confirm the validity of indications based on the New Jersey data.

Fast track frequency trends have been dropping for the last four years. Specifically, CW indicated frequency trends thru September, 1991 were -1.5%, -1.9%, -2.9%, and

-4.9% for the last 19, 12, 9, and 6 points, respectively. New Jersey indicated frequency trends for the same periods were -5.0%, -6.3%, -7.5%, and -7.0%, respectively. The current New Jersey data indicate a possible leveling of the rate of decline recently experienced. The internal data show similar, but somewhat higher indicated frequency trends, at around the -5.0% to -2.0% level, with a slowing in the rate of decline (as suggested by the Fast Track data). Because of the distortions in these data, however, they were given less credibility than the Fast Track data. Therefore, the -5.0% frequency trend selection made for the last study was retained.

Indicated severity trends for New Jersey have also shown a decling [sic] pattern. Fast track indications thru 9/91 for 19, 12, 9 and 6 points were 8.6%, 4.9%, 2.3%, and 0.8%, respectively. Countrywide indications for the same time periods were 6.7%, 4.8%, 3.8%, and 2.5%, respectively. Again, countrywide indications have been moving in the same direction as the New Jersey indications, but at a somewhat slower pace. The internal trend indications were also at about 3%. The most recent CPI cost data averaged 3.6% while the ADP parts indices averaged -1% (although this was skewed by the somewhat old -3% ADP salvage index). These various indications suggest a prospective average claim cost of about 2% to 3%. Such a selection, coupled with the selected frequency change, would result in a negative pure premium trend for this coverage. Although this would be supported by the most recent New Jersey and countrywide data, this was considered to be too speculative a choice at this time. Therefore, the 7% severity trend selected for the last study was retained. This results in a pure premium trend of 1.7%, which is consistent with a combination of the New Jersey

and countrywide 12 point pure premium indications, the latest internal trend indications, and the weighted CPI indices.

A summary of the indicated and selected frequency and severity trends is shown on Exhibit 4 pages 1 and 2.

c. Personal Injury Protection

Coverage changes in the form of higher deductibles and co-payment requirements have caused distortion in the observed PIP trend data. For this coverage other relevant surrogate data were not readily available. Until the FAIR Act, New Jersey was one of only two states to include unlimited medical expense benefits in PIP. At the same time, the New Jersey wage loss benefits at the base of $100 per week were rather low. The combined PIP package, however, initially provided on a first dollar basis, was richer than any other state. Therefore, the observed severity trends from other jurisdictions are not comparable nor relevant to New Jersey. Therefore, cost information may only be obtained by reference to the various medical cost indices (since more than 90% of PIP losses are due to medical expenses). As noted above the average of these indices is currently at 7.6%.

Frequency trends from other jurisdictions have limited relevance due to the mix of underlying laws, traffic patterns, etc. However, they may be used as a reference point in reviewing PIP frequency trends. The observed countrywide frequencies have been stable for the past year at about 2.5%.

Given these data, a pure premium trend of 9% was selected. This was adjusted by 1% to 8% in consideration

of the FAIR Act's introduction of the medical fee schedule. This selection is consistent with the 7.9% selected for the last study.

A summary of the indicated and selected frequency and severity trends is shown on Exhibit 4.

Given the number and kinds of law changes that have taken place over the last several years, the ISO trend data were not useful as support for the selected PIP trend.

d. Comprehensive

Indicated trends based on New Jersey Fast Track data suffer from distortion due to shifts in distribution of business by deductible. However, current values show declining trends similar to those observed for PD. Although not directly comparable, a similar downward pattern appears in the countrywide Fast Track data.

Given that no valid data for this coverage were available, an 8% change in pure premium was judgmentally selected. This is consistent with the last available ISO trend calculated excluding wind and water losses at 8%. This is 2 points higher than the 6% selected at the last study which gave greater recognition to the current CPI indices. Given the possible volatile nature of this coverage, this position was reconsidered and the full 8% included herein.

e. Collision

Because these data were also distorted due to shifts in distribution of business to higher deductibles, the pure premium trend for this coverage was set equal to the PD pure premium trend at 1.7%. This is consistent with the various

CPI cost indices. A summary of the indicated and selected frequency and severity trends is shown on Exhibit 4.

f. Trend Period and Method of Application

The selected frequencies, severities, or pure premiums, as applicable by coverage, were trended exponentially. The trend period was from the average date of loss in the historical experience period to the average date of loss in the ensuing experience period.

C. Expenses

1. Claim Service Fees Paid

Claim service related costs include the servicing carrier fees, directly reimbursable expenses and the SIU allowance. Servicing carrier fees were treated as unallocated loss adjustment expenses (ule) and subjected to the expense trend procedure. The remaining expenses were treated as ale and included with losses.

The fixed monthly fee paid to Computer Sciences Corporation was allocated to coverage in proportion to the other expenses by coverage.

The last study included these expenses at their paid values. This study reflects the selected ultimate incurred values for DRE and claim service fees developed in the January 11, 1992 OCS reserve study.

2. Non-Claim Service Fees and Other Expenses

Non-Claim service fees were allocated to coverage in proportion to written premium by coverage. A 1% loading, based on observed actual costs to date, was included to cover MTF administrative costs.

3. Expense Trend

MTF costs consist primarily of fees paid to the servicing carriers for policy and claims processing. These fees are based on numbers of policies and numbers of claims. The servicing carrier contracts provide for CPI adjustments to the per unit costs. Therefore, the expense trend procedure based on the CPI parallels this agreement.

The expense trending method consists of developing a current cost factor utilizing the latest CPI indices and trending from that point to the appropriate date in the prospective experience period. For non-claim expenses this is six months beyond the expected effective date of the new rates and for claim expenses it is the expected date of loss in the prospective rating period.

The resultant current cost factor and expense trend values were 1.014 and +3.5%, respectively.

4. Other Expenses

Other expenses include commissions, premium tax, UCJF assessment, start-up costs, administrative costs of operation, and various miscellaneous expenses. The following assumptions were made regarding each expense item.

a. Commissions

These were set at the ratio of actual commissions written to premiums written as provided on the AIPSO reports. This resulted in the unexpected amounts of 8.2% for liability and 9.2% for physical damage.

b. Premium Tax

This was derived from the figures included in the MTF financial statements at 0.25%.

c. UCJF

The MTF has set aside provision for a 7.7% UCJF assessment. Note that this is the anticipated 1992 assessment level based on information from the MTF. This factor represents an increase over the 7.3% included in the last study based on the UCJF 1991 assessment level.

d. Start-Up Costs

MTF servicing carriers were reimbursed for start-up costs in the amount of $5.6 million. Because this was a one time cost, it is not an amount which should to [sic] be built into the permanent future rate structure. Therefore, it was not included in the calculated required rate level derived herein. However, it is an amount which the MTF must fund at some point, and now is part of the MTF deficit.

e. Administrative Costs

According to its financial statement, the MTF has current operating costs of about 0.7%. This was increased to 1% based on information from MTF management.

f. Miscellaneous Expenses

The MTF financial statement displayed various miscellaneous expenses which are not all captured within the MTF administrative allowance. These include items such as premiums charged off. There are also offsetting items such as commissions charged off. For expediency these items were not explicitly relected [sic] in these calculations. Their effect on the overall result would be minimal.

D. Cash Flow Analysis

The various income and outgo items were included at the values cited above. The timing of each item is described below. As noted earlier, a 5% discount factor was applied.

1. Premium Collection

The quarterly collection pattern of 58%, 14%, 28%, and 28% was based on the MTF six pay plan. As noted above, these values were adjusted by a factor of 75% for purposes of calculating the expected value of investment income.

2. Loss and ALE

The quarterly payout patterns were taken from the January 11, 1992 OCS reserve study. These patterns reflect expected closure of all claims within a ten year period for BI and PIP and shorter periods for the property coverages.

3. Commissions

Commissions were expected to be paid within the first quarter.

4. Premium Tax

Premium tax was estimated to be paid in the second quarter.

5. UCJF Assessment

This assessment was expected to be paid in the fifth quarter.

6. General Expenses (Non-Claim)

These expenses were expected to be paid equally in the first four quarters.

7. Claim Expenses (Unallocated)

These were expected to be paid half over the first four quarters and then in proportion to loss payments.

E. FAIR Act

The FAIR Act contains several provisions which the Legislature intended to result in cost savings. The major provisions through which cost savings may be realized include the following:

1. A medical fee schedule promulgated by the Commissioner and intended to set a cap on costs which impact most directly on the PIP coverage.

2. A requirement that every insurer institute and enforce more detailed anti-fraud plans.

3. Towing and storage fee schedules intended to cap costs connected with physical damage coverages.

4. The requirement that insurers adjust prices for the physical damage coverages in relationship to a driver's provision of anti-theft devices.

5. The requirement for photo inspection of vehicles intended to reduce the cost of physical damage coverages.

6. An amnesty campaign for uninsured motorists.

In reviewing these cost savings opportunities it must be remembered that they became operative at various points during 1991. Therefore to some extent, the historical experience period herein, already reflects some of these savings so that any annualized estimates must be correspondingly adjusted.

Brief review of each of these measures resulted in the following savings estimates by coverage.

1. For BI and PD the FAIR Act provided no cost savings measures.

2. For UM, the amnesty program was largely unsuccessful, with only 11,000 drivers taking advantage of the plan. Further, the DMV penalty procedure is not yet in place. An expected date for operation was not available. The NJ DOI (not OCS) had originally estimated that this program would result in a 25% cost savings for this coverage. Given the remaining short life of the MTF, little to no effect of this program can be expected. Therefore, a 5% savings was reflected in the UM indicated rate level need. The selected 5% factor was based on jugment.

3. For PIP, the medical fee schedule was estimated to save 1% in future costs, and 1% in

historical costs to the extent that they reflected costs incurred prior to the medical fee schedule. Therefore, the trend factor was reduced by 1%. The rate level effect, however, should be nearly fully realized within the historical experience period since the related rules were adopted by the Insurance Department on an emergency basis on November 26, 1990 and on a final basis on January 25, 1991. Nonetheless, the 1% savings was applied to the otherwise estimated required PIP rate level change.

4. For Comprehensive and Collision, the photo inspection program was estimated to produce a savings of 5% based on the results of a similar program in New York. The anti-fraud program was estimated to produce a savings of less than 1%. Thus, 5% was used in total as the estimated savings for these two programs. These plans were effective July 1, 1991, and therefore, were only minimally reflected in the observed historical data.

Therefore, when taken at full face value, the FAIR Act savings were included at an overall rate level effect of -2.1%. However, this may somewhat overstate the value of these reforms to the MTF given the effective dates of the various reforms and the historical experience period relied on for calculations herein.

MTF [logo] **Market Transition Facility of New Jersey**

293 Eisenhower Parkway,
Livingston, New Jersey 07039
(201) 533-1165

January 14, 1992

Hon. Samuel F. Fortunato
Commissioner of Insurance
NJ Department of Insurance
CN 325 12th Floor
Trenton, NJ 08625

RE: Report on Fiscal Year Results

Dear Commissioner Fortunato:

Pursuant to Department of Insurance Order No. A91-212, the Market Transition Facility of New Jersey is hereby submitting the financial results of its first fiscal year of operation.

The period covered by this report is October 1, 1990 through September 30, 1991. The results include data on premiums, losses, and operational expenses as well as investment income. The results also include the incurred but not reported (IBNR) loss figure for this period.

The overall deficit has increased from the preliminary estimate of $300 million to $375 million for several reasons. Arthur Andersen has confirmed that AMGRO has overstated earned premiums by $33 million. Another factor was that September developed lower premiums and higher losses than anticipated. The remainder is due to higher IBNR figures.

Our report will be provided to all of the MTF Member Companies.

Very truly yours,

/s/ R. T. Haskins
R.T. HASKINS, CPCU, CLU
Special Deputy Commissioner

RTH/hm

cc: Jasper Jackson, Deputy Commissioner
Neil W. Pearson, General Manager
Henry Witmer, MTF
Member Companies

Date:
14-Jan-92

MARKET TRANSITION FACILITY
BALANCE SHEET
SEPTEMBER 30, 1991

ASSETS:	
SHORT TERM INVESTMENTS	$555,855,461
PREMIUMS RECEIVABLE	347,928,589
RECOVERABLES:	
UCJF RECOVERABLE	1,258,622
NJAIRE RECOVERABLE	115,625
	1,325,247
DUE FROM NJAFIOA	8,785,545
ACCRUED INTEREST	316,044
OTHER ASSETS	1,101,592
TOTAL ASSETS	$ 915,372,478

LIABILITIES AND DEFICIT:

OUTSTANDING LOSSES AND LOSS EXPENSES:	
LOSS RESERVES (NET OF UCJF OF $4,372,520)	$228,561,819
IBNR LOSS RESERVES	254,489,402
DIRECTLY REIMBURSABLE CLAIM EXPENSE RESERVE	33,805,000
	516,836,221
UNEARNED PREMIUMS (INCLUDING DIP AND DRDP SURCHARGES)	648,844,899
ACCOUNTS PAYABLE AND ACCRUED EXPENSES:	
CASH OVERDRAFT	23,804,953
UCJF ASSESSMENT	47,893,489
SERVICING CARRIER FEES - CLAIMS	20,843,009
SERVICING CARRIER FEES - OPERATING	13,979,821
BALANCE PAYABLE - NJAIRE	8,731,469
ACCRUED EXPENSES	1,174,255
	117,226,976
OTHER LIABILITIES:	
COMMISSIONS	5,651,130
PREMIUM TAX PAYABLE	1,888,834
	7,539,964
ACCUMULATED DEFICIT	(374,875,582)
TOTAL LIABILITIES AND ACCUMULATED DEFICIT	$915,372,478

Date:
14-Jan-92

MARKET TRANSITION FACILITY
STATEMENT OF OPERATIONS
FOR THE YEAR ENDED SEPTEMBER 30, 1991

PREMIUMS (NET OF PREMIUMS RESERVE OF $850,919,299)	$669,585,157
LOSSES INCURRED	701,203,919
LOSS EXPENSES INCURRED	107,956,294
COMMISSIONS	112,323,596
OTHER UNDERWRITING EXPENSES:	
PREMIUM TAXES	3,497,440
SERVICING CARRIER FEE	63,585,254
GENERAL AND ADMINISTRATIVE	12,387,477
OTHER ADMINISTRATIVE EXPENSES	85,057,559
	154,507,730
NET UNDERWRITING LOSS	(406,431,382)
PREMIUM CHARGE OFFS FOR UNCOLLECTIBLE PREMIUMS	(2,101,570)
INCOME ATTRIBUTABLE TO FULLY EARNED COMMISSION	5,215,754
INSTALLMENT FEES INCOME	13,943,142
NET INVESTMENT INCOME	14,498,474
OPERATING LOSS	($374,875,582)

[LOGO]

State of New Jersey
DEPARTMENT OF INSURANCE

SAMUEL F. FORTUNATO
COMMISSIONER

CN 325
TRENTON, N.J. 08625-0325

TO: Member Insurers of the Market Transition Facility

FROM: Samuel F. Fortunato, Commissioner

DATE: January 14, 1992

RE: Proposed Amendments to the Plan of Operation of the Market Transition Facility

Enclosed for your information is a proposed amendment to the Plan of Operation of the Market Transition Facility (MTF).

Article V(4) of the MTF Plan of Operation requires a plan to be developed and approved by the Commissioner for the apportionment of the profits or losses among the member insurers.

Article XIV, proposed as an amendment to the Plan of Operation, establishes for use by the MTF a modified (Lloyd's) accounting system using a three-year reporting period. The results of each reporting year will be reevaluated annually during the three-year cycle. Under the terms of the proposed amendment, there will be no cash call until the completion of the Lloyd's cycle.

Also enclosed is a memorandum advising of the Department's request to the United States Internal Revenue Service for a ruling as to the tax status of the MTF.

Lastly, Article XIV also sets forth the formula for apportioning the MTF operating results among member insurers. If applicable, enclosed is your company's apportionment share of the MTF operating results for the first reporting year. Please be advised that your apportionment share does not include exposure credits earned under the Producer Voluntary Placement Plan (Plan). Member insurers will be contacted shortly about a further opportunity to appoint producers under the Plan whose exposures will be credited towards the April 1991 and October 1991 quotas.

January 14, 1992 /s/ ____________
Date Samuel F. Fortunato
Commissioner

MARKET TRANSITION FACILITY OF NEW JERSEY

PLAN OF OPERATION

ARTICLES OF ASSOCIATION

ARTICLE V

FINANCIAL

1. For the purposes of reporting operating results to member insurers the MTF has adopted a modified "Lloyd's" accounting cycle as set out in Article XIV below. The MTF's fiscal year shall be the calendar year except for the first year of operation which shall be the fifteen month period beginning October 1, 1990.

2. The MTF shall derive its revenue from the following sources for the payment of expenses, losses, loss adjustment expenses, and the provision of adequate,

actuarially sound reserves for unpaid losses and loss adjustment expenses, including incurred but not reported losses in connection with MTF business: (1) net premiums earned; (2) income generated from any MTF violation or accident surcharge system permitted or required by law; (3) income from investment of moneys collected; and (4) assessments from member companies.

3. Any insurer which has ceased to transact automobile insurance in this State shall nevertheless remain liable for revenue due the MTF, as provided in the Plan of Operation.

4. The losses or profits of the MTF shall be apportioned among the member companies as provided by a plan approved by the Commissioner and incorporated as Article XIV of these Articles and may include assessments of member companies or refunds to member companies.

5. The MTF may, from time to time, establish such banking arrangements as may be necessary to further the purposes of the MTF.

Adopted 4/29/91.

ARTICLE XIV

APPORTIONMENT OF MTF PROFITS AND LOSSES

1. For the purpose of reporting operating results to member insurers, the MTF has adopted a modified "Lloyd's" accounting cycle for a three year period with annual reporting. The reporting period is each twelve month period extended from October 1, through September 30.

2. The results of each reporting year described in paragraph 1 above will be reported within 90 days of the end of that reporting year on an interim basis. The results for each reporting year will be re-evaluated annually during the three year cycle. The Member Company's respective shares in the MTF's results will be calculated as described below for each reporting year. No cash call shall be made on Member Companies nor cash profits distributed until the completion of the Lloyd's cycle.

3. A Member Company of the MTF shall be a Member Insurer as defined in Article IV of these articles of Association but shall include a group of two or more insurers licensed to write automobile insurance in this State under common management and control. The Operating Results of the MTF will be apportioned on a group basis.

a. Non-Quota Member Company shall mean a Member Company or group that does not have an individual apportionment share for depopulation because the company entered the market after September 30, 1988.

4. For each reporting year, a determination shall be made whether any Member Company had a Shortfall in Exposures. A Shortfall in Exposures shall be calculated as follows:

a. For the first reporting year, if the average of the in-force exposures of each Member Company of the MTF as reported on September 30, 1990, December 31, 1990, March 31, 1991, June 30, 1991 and September 30, 1991 is less than the average of the Voluntary Market Quotas for that Member Company, as defined in Part I of the Plan of Operation, for the three quota periods ending

September 30, 1990, March 31, 1991 and September 30, 1991;

b. For the second reporting year, if the average of the inforce exposures of each Member Company of the MTF as reported December 31, 1991, March 31, 1992, and June 30, 1992 and September 30, 1992 is less than the average of the Voluntary Market Quotas for that Member Company, as defined in Part I of the Plan of Operation, for the two quota periods ending March 31, 1992 and September 30, 1992;

c. For the third reporting year, if the average of the in-force exposures of each Member Company as reported on December 31, 1992 and March 31, 1993 is less than the Voluntary Market Quota for that Member Company, as defined in Part I of the Plan of Operation, established for the quota period that ends on March 31, 1993.

5. The in-force exposures of the Member Companies shall include exposure credits earned by participation in the Producer Voluntary Market Placement Plan (PVPP).

6. The average in-force exposures for all Member Companies shall be calculated as follows:

a. For the first reporting year, the average of the in-force exposures of each Member Company of the MTF as reported on September 30, 1990, December 31, 1990, March 31, 1991, June 30, 1991 and September 30, 1991;

b. For the second and third reporting years, the average of the in-force exposures of each Member Company of the MTF as reported on December 31, March 31, June 30 and September 30.

7. If there is no Shortfall in Exposures as calculated in paragraph 4 above for the reporting year the net operating results of the MTF, whether a profit or a loss, shall be apportioned among the Member Companies as follows:

a. For Non-quota member Companies, the ratio of the average in-force exposures of the Non-quota Member Company to the average in-force exposures of all the Member Companies for each reporting year as described in paragraph 6 above, shall be multiplied times the MTF profit or loss;

b. All other Member Companies shall have their apportionment share calculated by multiplying the profit or deficit of the MTF, adjusted for that part of the profit or loss apportioned to the Non-Quota Member Companies, by each Company's quota share percentage as determined in Part I of the Plan of Operation, Depopulation of Residual Market, Appendix I, Determination of Member Company Quotas.

8. If there is a Shortfall in Exposures as calculated in paragraph 4 above for the reporting year and the net operating results of the MTF show a loss, a portion of the loss attributable to the failure of Member Companies to depopulate the MTF shall be determined. This portion of the loss and remainder of the MTF loss shall be apportioned among the Member Companies pursuant to paragraphs 9 through 12 below.

9. The portion of the MTF loss that is due to the Shortfall in Exposures shall be calculated as follows:

a. The MTF loss shall be divided by the average of the total exposures in force in the MTF for the reporting year as described in paragraph 6 above. The result is the Actual MTF loss per Exposure;

b. The Actual MTF loss per Exposure as calculated in (a) above shall be multiplied by the total of the Shortfalls of all Member Companies.

10. The Adjusted MTF loss shall be calculated by subtracting that portion of the loss attributable to the failure to depopulate as calculated in paragraph 9 above from the MTF loss.

11. The Adjusted MTF loss shall be apportioned among the Member Companies as follows:

a. For Non-quota Member Companies, the ratio of the average in-force exposures of the Non-quota Member Company to the average in-force exposures of all the Member Companies for each reporting year as described in paragraph 6 above shall be multiplied times the Adjusted MTF loss;

b. All other Member Companies shall have their apportionment shares calculated by multiplying the Adjusted MTF loss, less that part of the loss apportioned to the Non-quota Member Companies, by each Company's quota share percentage as determined in Part I of the Plan of Operation, Depopulation of Residual Market, Appendix I, Determination of Member Company Quotas.

12. Member Companies with a Shortfall in Exposures shall have their apportionment share of the MTF

loss increased because of their failure to meet the statutory obligation to depopulate the residual market. The amount of the increase shall be calculated as follows:

a. The ratio of the Member Company Shortfall in Exposures to the total of all Member Company Shortfalls for that reporting year shall be multiplied by the amount of the MTF loss attributed to the failure of Member Companies to depopulate the MTF.

13. In the event that the MTF results show a loss and a cash call for a Member Company's apportionment share as calculated in paragraph 7 or 11 above is made, the assessment may be permitted as a company expense for the purposes of rate-making:

a. Where the apportionment shares as calculated in paragraph 7 or 11 above would put a Member Company in unsafe or unsound financial condition, the Company may apply to the Commissioner for a deferral or exemption from the assessment.

14. Those companies that failed to meet their depopulation quotas and who receive an additional assessment as described in paragraph 12 above may not include that additional assessment in any rate filing.

15. If there is a Shortfall in Exposures for the reporting year and the net operating results of the MTF show a profit, an amount shall be calculated that represents unrealized profit that would have been made by the MTF had there been no Member Company Shortfalls. That amount shall be deducted from the apportionment of the profit of the Member Companies that had a Shortfall in Exposures.

The profit shall be apportioned among the Member Companies pursuant to paragraph 16 through 19 below.

16. The amount of unrealized MTF profit that is due to the Shortfall in Exposures shall be calculated as follows:

a. The profit of the MTF shall be divided by the average of the total exposures in force in the MTF for the reporting year as described in paragraph 6 above. The result is the Actual MTF profit per Exposure;

b. The Actual MTF profit per Exposure as calculated in (a) above shall be multiplied by a total of the Shortfalls of all Member Companies.

17. The Adjusted MTF profit shall be calculated by adding the unrealized profit as calculated in paragraph 16 above to the MTF profit.

18. The Adjusted MTF profit shall be apportioned among the Member Companies as follows:

a. For Non-quota Member Companies, the ratio of the average in-force exposures of the Non-quota Member Company to the average in-force exposures of all the Member Companies for each reporting year as described in paragraph 6 above, shall be multiplied times the Adjusted MTF profit;

b. All other Member Companies shall have their apportionment shares calculated by multiplying the Adjusted MTF profit by each Company's quota share percentage as determined in Part I of the Plan of Operation, Depopulation of Residual Market, Appendix I, Determination of Member Company Quotas.

19. Member Companies with a Shortfall shall have their apportionment share of the MTF profit decreased because of their failure to meet the statutory obligation to depopulate the residual market. The amount of the decrease shall be calculated as follows:

a. The ratio of the Member Company Shortfall in Exposures to the total of all Member Company Shortfalls for that reporting year shall be multiplied by the amount of the unrealized MTF profit.

20. For purpose of illustration only, assume that at the end of the first accounting year the MTF shows a net loss of $100 million and there are Member Companies that had an Exposure Shortfall. Assume further that the average total exposures in the MTF equals 1 million and the total of all the Member Company Shortfalls is 200,000. Company A's quota share percentage is 10 percent and its Exposure Shortfall is 30,000 exposures and Company B's quota share percentage is 5 percent and it had no shortfall:

a. The MTF loss per exposure equals $100. The loss per exposure times the Total Member Company Shortfall of 200,000 equals $20 million. Therefore, $20 million of the MTF's total loss of $100 million can be attributed to the failure of Member Companies to meet their quotas;

b. The Adjusted loss of the MTF is $80 million. Company A's share of the adjusted loss is $8 million, 10 percent of $80 million. Company B's share is $4 million, 5 percent of $80 million;

c. Company A, in addition to its apportionment share of the adjusted deficit also receives an additional assessment because it had a Member Company Shortfall in Exposures. The additional assessment is calculated by taking the ratio of Company A's Member Company Shortfall to the total Member Company Shortfall of 30,000/200,000. The result, .15, is multiplied by $20 million, that portion of the MTF's loss resulting from the failure to depopulate. Company A, therefore, must pay an additional amount of $3 million in addition to its apportionment share.

[LOGO]

NEW JERSEY DEPARTMENT OF INSURANCE

Samuel F. Fortunato
Commissioner

FOR RELEASE: CONTACT: Jim Berzok
January 15, 1992 (609) 633-3955

INSURANCE DEPARTMENT TELLS COMPANIES THEY OWE $180 MILLION FOR FAILING TO DEPOPULATE MTF; OTHER FINANCIAL DATA SUPPLIED TO COMPANIES; NO CASE CALL – IF NECESSARY AT ALL – UNTIL 1994

TRENTON – The New Jersey Department of Insurance has notified certain insurers that they will bear a $180 million share of the Market Transition Facility deficit for failing to depopulate the state-run insurer in a timely manner, Commissioner Samuel F. Fortunato announced today.

The Fair Automobile Insurance Reform Law gives the Commissioner the authority to assign a share of the MTF deficit to only those companies that have consistently failed to meet their depopulation quotas.

"The Attorney General gave us a go-ahead to allocate an additional share of the MTF deficit to those companies that have been dragging their feet and not complying with the law," the Commissioner said.

"This part of the deficit should not be spread over the entire industry. It would not be fair to those companies that have opened up the auto insurance market by

working hard to write thousands of new policies every month," Fortunato added.

Fortunato said Allstate bears the largest burden with a $30.8 million depopulation adjustment allocation. Allstate's total allocation of the MTF deficit is $64.7 million.

The Commissioner said several major companies have expressed support for the depopulation adjustment allocation.

One company, the Hartford Insurance Group, sent a letter last week to the Commissioner from vice president Henry Katz. Katz said: "While you have not yet asked for input on a plan for sharing of the MTF operating results, we would like to take this opportunity to express our opinion . . . "

"We feel that the MTF operational results participation formula must address the actual performance of companies against their depopulation quotas . . . Failure to include some adjustment to the participation formula to reflect a company's depopulation performance actually rewards companies with quota shortfalls and offers an incentive to avoid writing future quotas," Katz said.

The depopulation adjustment allocations were released as part of a package of MTF financial data supplied to all MTF member companies. Attached is a list of the top 10 automobile insurance writers in New Jersey with their allocation numbers.

The Commissioner said that by failing to take their fair share of MTF drivers, certain companies are also dodging the payment of their fair share of surtaxes and

assessments, which are calculated based on each company's premium volume and were established under the FAIR Law.

The industry is required to pay off over seven years \$1.4 billion of the Joint Underwriting Association's \$3 billion-plus deficit.

The FAIR Law abolished the JUA and created the MTF in order to move drivers out of the state high risk pool and into the private market. To date, nearly 1 million drivers have been successfully moved into the private market.

The \$180 million in depopulation adjustment allocations represents roughly half of the revised MTF deficit figure of \$375 million that was also reported to member companies.

"The deficit would have been much less had those companies depopulated in a timely manner," the Commissioner noted.

Fortunato said the deficit increased after actuaries calculated figures for the MTF's "incurred but not reported" losses. IBNR represents reserves an insurance company needs on hand to pay claims which have not yet been reported.

"The MTF has plenty of cash to continue to pay claims," Fortunato said. "However, we must remain vigilant to keep the MTF financially healthy."

The Commissioner said a significant reason the deficit increased was due to a \$33 million over-reporting of premium by Amgro, one of the three companies writing policies for the MTF.

The Commissioner explained that under a new accounting system adopted by the MTF, the Department will make no cash call, if necessary at all, on any company for its share of the MTF deficit until 1994 at the earliest.

The new accounting system, used for decades by Lloyd's of London, enables regulators to assess the MTF's financial condition for any particular year over a three-year cycle instead of a 12-month period, Fortunato said.

"This system will provide a highly accurate gauge of the MTF's financial condition and whether an industry assessment for any year's operation is finally necessary," he said.

The new accounting system, a hybrid between standard statutory accounting principles and Lloyd's of London syndicate accounting, was developed by Arthur Andersen & Co.

Fortunato explained that the MTF is like no other insurance company doing business in the state. Because MTF's book of business will swell and ebb in a very short period of time, a three-year accounting plan is more practical to use.

"Over a 36-month period, we expect the MTF to go from zero policies to 1.1 million policies then back down to zero," Fortunato continued.

The three-year accounting system allows the Department to evaluate the MTF after each year and notify each member company of the MTF's profits or losses.

Under the former system, if MTF claims outstripped revenues, the Department would be required each to bill the companies for their share of the possible deficit.

Those companies might then apply for a rate increase claiming they could not make an adequate rate of return.

Under the three-year accounting plan, the Department will evaluate the MTF each year and then notify each company of the MTF's financial condition. The financial picture will be adjusted over the next two years and bills will be sent out only if a deficit remains after the end of the three-year period.

"This gives us and the industry a much more accurate insight into the MTF's finances despite a very volatile book of business. Additionally, since the companies do not part with any money until they are billed, investment earnings and income tax savings can be passed on to the New Jersey policyholders," Fortunato said.

The MTF began operation on Oct. 1, 1990 and will issue its' [sic] last policy in Sept. 30, 1992.

* * *

Market Transition Facility Allocation
of First Year Loss to Top 10 Member Companies

Member Company	Regular Member Co. Allocation	Adjusted MTF Depopulation Allocation	Total Allocation
Allstate	$33,895,132	$30,896,312	$64,791,444
State Farm	23,073,046	0	23,073,046
Prudential	20,371,649	10,942,677	31,314,326
NJ Manufacturers	18,357,546	0	18,357,546
Liberty Mutual	12,540,368	21,157,743	33,698,111
Selective	7,703,556	0	7,703,556
USAA	5,193,257	1,333,300	6,526,557
Ohio Casualty	3,729,875	0	3,729,875
Keystone	3,351,551	748,863	4,100,414
Aetna	6,114,854	13,584,668	19,699,522

[SECOND REPRINT]
SENATE, NO. 3577

STATE OF NEW JERSEY

INTRODUCED JUNE 17, 1991

By Senators FOY, CARDINALE, O'CONNOR, DiFRANCESCO, RICE, BUBBA and CONTILLO

AN ACT concerning certain producers of record and amending P.L.1983, c.65 and P.L.1990, c.8.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 28 of P.L. 1983, c.65 (C.17:30E-14) is amended to read as follows:

28. a. Within 45 days of the effective date of [this 1988 amendatory and supplementary act] P.L. 1988, c.119 (C.17:28-1.4 et al), the commissioner shall, in the plan of operation, establish procedures to govern the voluntary writing of applicants and association insureds without the utilization of the association. These procedures shall include criteria identifying drivers who should be eligible

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*EXPLANATION– Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
1 Senate SLI committee amendments adopted December 5, 1991.
2 Senate floor amendments adopted December 16, 1991.

for coverage in the voluntary market. Applicants and association insureds meeting these criteria shall be subject to assignment by the association to member companies, pursuant to an equitable apportionment procedure established in the plan of operation. The procedure shall give due consideration to the increase or decrease in the volume of private passenger automobile non-fleet exposures voluntarily written by member companies in this State since January 1, 1984.

b. (1) Pursuant to the procedures established in the plan of operation under subsection a. of this section, the commissioner shall establish a voluntary market quota, which shall not be less than 80% of the aggregate number of private passenger automobile non-fleet exposures written in the total private passenger automobile insurance market in this State on the effective date of [this 1988 amendatory and supplementary act] P.L.1988, c.119 (C.17:28-1.4 et al). The quota shall prescribe the number of voluntary market exposures which shall be written by member companies during the 12-month period beginning 80 days after the effective date of [this 1988 amendatory and supplementary act] P.L.1988, c.119 (C.17:28-1.4 et al).

(2) Within 30 days of the effective date of P.L. 1990, c.8 (C.17:33B-1 et al), the commissioner shall prescribe a second quota, which shall take effect immediately upon adoption by the commissioner and which shall not be less than 68% of the aggregate number of private passenger automobile non-fleet exposures written in the total private passenger automobile insurance market in this State on or before October 1, 1990. The quota shall prescribe the number of voluntary market exposures which shall be

written by member companies during the period described in this paragraph.

(3) (Deleted by amendment, P.L.1990, c.8.)

(4) (Deleted by amendment, P.L.1990, c.8.)

c. In the event that any of the quotas established by the commissioner pursuant to subsection b. of this section have not been met by the end of any applicable period, the commissioner shall direct the association to assign the balance of the exposures needed to meet the applicable quota to member companies in a manner consistent with the apportionment procedure established pursuant to subsection a. of this section. A member company which exceeded its apportionment share for the 12-month period prescribed pursuant to paragraph (1) of subsection b. of this section shall receive credit for the excess against the quota imposed pursuant to paragraph (2) of subsection b. of this section.

d. (Deleted by amendment, P.L.1990, c.8.)

e. For the purposes of this section, any exposure written in the voluntary market by an affiliate of the insurer to which an apportioned share has been assigned shall be credited against that share.

f. The total number of exposures written in the voluntary market, net of exposures cancelled or non-renewed, by a member company at the end of the applicable period shall be utilized in determining whether the member company has written its apportionment share in the voluntary market for purposes of complying with any quotas established by the commissioner pursuant to this section.

g. The commissioner may excuse a member company from meeting any of its obligations under this section that he determines would result in the member company being in an unsafe or unsound condition.

h. Any member company that does not write its apportionment share of any quota established by the commissioner pursuant to subsection b. or c. of this section within the applicable time period shall be precluded from nonrenewing automobile insurance policies pursuant to section 26 of P.L.1988, c.119 (C.17:29C-7.1) during the immediately following 12-month period.

i. In addition to the requirements of subsection a. of this section, the procedures governing the increase in voluntary market volume shall:

(1) establish guidelines and criteria for determining whether a person is a qualified applicant as defined in section 15 of P.L.1983, c.85 (C.17:30E-3), and procedures for the issuance of automobile insurance through the voluntary market to persons found not to be qualified applicants for association coverage, and for the referral of persons determined not to be eligible for association coverage to alternative residual market mechanisms:

(2) include provisions ensuring that servicing carriers do not obtain any unfair advantage over other member companies in the selection of qualified applicants and association insureds to be written as voluntary business:

(3) [neither prohibit nor require member companies to write association business through association producers of record, provided, however, that where a member company elects not to service such business through

the association producer of record, the procedures shall address the manner in which the association shall transfer the business to the member company, and shall establish reasonable compensation in an amount sufficient to offset the actual expenses incurred by the association producer in conjunction with the transfer which shall be paid by the association upon transfer of the business to the member company] [1][provide that exposures assigned to member companies in accordance with subsection c. of this section as a result of the failure of the member company to meet an applicable quota shall be written through the association producer of record, notwithstanding the fact that the association producer of record is not a voluntary market producer of the member company assigned that exposure. In such case, the association producer of record shall retain complete control, possession and ownership of all records and renewals regarding the exposures written pursuant to this paragraph (3). The member company shall not use any such records, nor information it obtains in the normal course of business, to solicit direct renewal of the exposures, other insurance or any other products. The association producer of record shall be paid a commission by the member company on the exposures written by the member company through the association producer of record, and on all renewals thereof, at the same rate and on the same terms as the member company pays commissions for similar coverage to its voluntary market producers. If a member company provides its voluntary market producers with support services or other benefits in addition to a commission, and such support services or other benefits are not provided to the association producer of record, the commission paid to the association producer of record shall be

increased to make it equivalent to the value of the combination of commission and support services or other benefits paid or provided by the member company to its voluntary market producers. If the member company uses more than one commission schedule, rate or formula or provides different types of support services or other benefits to its voluntary market producers, it shall negotiate in good faith with the association producer of record so that the commission and support services and other benefits, if any, provided to the association producer of record are equivalent to that provided by the member company to its voluntary market producers for similar coverage. If a member company engages in the direct writing of exposures and neither it nor any affiliate has a commission schedule, rate or formula for the voluntary market, it shall pay the association producer of record a commission equivalent to the portion of the premium charged by the member company for voluntary market coverage that relates to its expenses for direct marketing, acquisition, servicing and related support staff, provided, however, that the commission shall be at least substantially equivalent to that paid by member companies that use commission schedules, rates or formulas. Notwithstanding any provision of this paragraph (3) to the contrary, if the member company uses premium rates of the Market Transition Facility for voluntary market exposures written through the association producer of record, the commission paid to the association producer of record shall be no less than that provided by the Market Transition Facility for such coverage] neither prohibit nor require member companies to write association business through association producers of record,[2] [provided,

however, that when association business is allocated, the procedures in this paragraph shall be observed] except as provided for in this paragraph[2].

(a) When an exposure assigned to a member company in accordance with subsection c. of this section, as a result of the failure of the member company to meet an applicable quota, is written by the member company assigned the exposure, the association producer of record shall have the right to service that business, which shall include all renewals thereof, and shall be entitled to a commission for that service in accordance with subparagraph (c) of this paragraph.

(b) This association producer of record shall retain [2]complete[2] control [2][and][2] possession [2]and ownership[2] of all records and [2][the right and entitlement to][2] renewals regarding exposures assigned pursuant to subsection c. of this section, provided, however, that the member company may maintain such records as are provided to it under the procedure established by subsection a. of this section. A member company that acquires access to records pursuant to this subparagraph shall not share any such records with any other producer or use any such records to solicit direct renewal of the business, a change in producer of record, other insurance products or any other products.

(c) The association producer of record shall be paid a commission by the member company on the business serviced by the association producer of record pursuant to this paragraph. That commission shall be paid at a percentage rate no less than that being paid by the Market Transition Facility on July 1, 1991.

(d) A copy of every notice, other than bills, and including renewal declarations, change endorsements, cancellations and reinstatements, and the corresponding payment schedules included therein, correspondence, claims checks and acknowledgements, sent to an insured by a member company with respect to business covered by this paragraph, shall be sent to the association producer of record.

(e) This paragraph shall be applicable only to exposures assigned to member companies in accordance with subsection c. of this section as a result of the failure by the member company to meet an applicable quota [2][and shall not apply beyond three years after the enactment date of this 1991 amendatory act.][2] This paragraph shall not constitute the grant of an agency contract by the member company to the association producer of record authorizing the association producer of record to write new business through the member company; provided, however, that the association producer of record shall have the authority to provide the usual and customary servicing of the business subject to this paragraph, including adding new and replacement vehicles and adding or changing coverages on the business.

(f) Nothing in this paragraph shall deprive an insured of the right to designate a producer of record other than the association producer of record. Upon that designation, the rights of the association producer of record under this paragraph shall terminate. Notwithstanding any provision in this paragraph, the rights of the association producer of record under this paragraph shall terminate in the event of the producer's insolvency,

gross and willful misconduct, fraud or license revocation[1]; and

(4) provide for financial disincentives to applicants who, without good cause, reapply for coverage in the association after being placed in the voluntary market. (cf: P.L.1990, c.8, s.20)

2. Section 88 of P.L.1990, c.8 (C.17:33B-11) is amended to read as follows:

88. a. There is created a Market Transition Facility to be operated by the Commissioner of Insurance pursuant to the provisions of this section. Every insurer authorized to transact automobile insurance in this State shall be a member of the facility and shall share in its profits and losses as provided by the commissioner pursuant to the provisions of subsection d. of this section.

b. The commissioner shall, within 30 days of the effective date of [this 1990 amendatory and supplementary act] P.L.1990, c.8 (C.17:33B-1 et al), appoint a Market Transition Facility Advisory Board which shall be comprised of six members, one of whom shall represent member companies organized on a mutual basis, one of whom shall represent member companies organized on a stock basis, one of whom shall represent servicing carriers, one of whom shall represent insurance producers, one of whom shall be a qualified actuary and one of whom shall represent the public. Advisory board members shall serve for the duration of the facility or until such time as their successor is appointed. Advisory board members shall not be compensated for their services but shall be reimbursed by the facility for any necessary and reasonable

expenses incurred in performance of their duties as members of the advisory board.

c. The facility shall arrange for the issuance and renewal of automobile insurance policies for the period commencing October 1, 1990 and ending September 30, 1992 pursuant to a plan of operation promulgated by the commissioner in consultation with the advisory board. The facility shall not issue or renew any policies of automobile insurance on or after October 1, 1992. The plan shall provide:

(1) The applicable levels of coverage available through the facility;

(2) That the premiums payable on policies issued by the facility shall be based on rates applicable to persons insured by the New Jersey Automobile Full Insurance Underwriting Association on September 30, 1990 but shall not incorporate the rates applicable under section 25 of P.L.1983, c.65 (c.17:30E-13) and section 22 of P.L.1988, c.119 (C.17:30E-13.1). However, the applicable rates for those insureds who do not qualify as eligible persons as provided in section 25 of [this 1990 amendatory and supplementary act] <u>P.L.1990, c.8 (C.17:33B-13)</u> shall be those set by the plan for the provision of automobile insurance established pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1);

(3) Procedures for the filing and approval of changes in rates applicable to policies issued or renewed by the facility;

(4) For the issuance and renewal of automobile insurance through servicing carriers under contract with

the New Jersey Automobile Full Insurance Underwriting Association pursuant to the provisions of section 24 of P.L.1983, c.65 (C.17:30E-12), utilizing, at the discretion of the commissioner, the staff of the association;

(5) Procedures for the depopulation of the facility which shall provide that: on or after April 1, 1991 no more than 29% of the aggregate number of private passenger non-fleet exposures written in this State shall be written by the facility and the New Jersey Automobile Full Insurance Underwriting Association created by P.L.1983, c.65 (C.17:30E-1 et seq.); on or after October 1, 1991 no more than 20% of the aggregate number of private passenger non-fleet exposures written in this State shall be written by the facility; on or after April 1, 1992 no more than 10% of the aggregate number of private passenger non-fleet exposures written in the State shall be written by the facility; and on or after October 1, 1992, 0% of the aggregate number of private passenger non-fleet exposures written in this State shall be written by the facility. In establishing the quotas set forth above, the plan shall prescribe the number of voluntary market exposures which shall be written during each six-month period set forth in this paragraph in a manner consistent with the apportionment procedure established pursuant to subsection a. of section 26 of P.L.1983, c.65 (C.17:30E-14). In the event that any of the quotas established pursuant to this paragraph have not been met by the end of the applicable period, the commissioner shall direct the facility to assign the balance of the exposures needed to meet the applicable quota to member companies pursuant to the apportionment procedure. A member company which exceeds its apportionment share for

any six-month period set forth in this paragraph shall receive credit for the excess against the following period's obligation. The commissioner may excuse a member company from meeting its obligations under the depopulation procedures if he determines that the company would be placed in an unsafe or unsound condition. [1][Exposures assigned to member companies in accordance with this paragraph (5) as a result of the failure of the member company to meet an applicable quota shall be written through the Market Transition Facility producer of record, notwithstanding the fact that the facility producer of record is not a voluntary market producer of the member company assigned that exposure. In such case, the facility producer of record shall retain complete control, possession and ownership of all records and renewals regarding the exposures written pursuant to this paragraph (6). The member company shall not use any such records, nor information it obtains in the normal course of business, to solicit direct renewal of the exposures, other insurance or any other products. The facility producer of record shall be paid a commission by the member company on the exposures written by the member company through the facility producer of record, and on all renewals thereof, at the same rate and on the same terms as the member company pays commissions on similar coverage to its voluntary market producers. If a member company provides its voluntary market producers with support services or other benefits in addition to a commission, and such support services or other benefits are not provided to the facility producer of record, the commission paid to the facility producer of record shall be increased to make it equivalent to the value of the

combination of commission and support services or other benefits paid or provided by the member company to its voluntary market producers. If the member company uses more than one commission schedule, rate of formula or provides different types of support services or other benefits to its voluntary market producers, it shall negotiate in good faith with the facility producer of record so that the commission and support services and other benefits, if any, provided to the facility producer of record are equivalent to that provided by the member company to its voluntary market producers for similar coverage. If a member company engages in the direct writing of exposures and neither it nor any affiliate has a commission schedule, rate of formula for the voluntary market, it shall pay the facility producer of record a commission equivalent to the portion of the premium charged by the member company on voluntary market coverage that relates to its expenses for direct marketing, acquisition, servicing and related support staff, provided, however, that the commission shall be at least substantially equivalent to that paid by member companies that use commission schedules, rates or formulas. Notwithstanding any provision of this paragraph (5) to the contrary, if the member company uses premium rates of the Market Transition Facility for voluntary market exposures written through the facility producer of record, the commission paid to the facility producer of record shall be no less than that provided by the Market Transition Facility for such coverage] When an exposure is assigned to a member company under this paragraph as a result of the failure of the member company to meet an applicable

quota, but only in such circumstances, the following shall apply:

(a) When an assigned exposure is written by the member company assigned the exposure, the facility producer of record shall have the right to service that business, which shall include all renewals thereof, and shall be entitled to a commission for that service in accordance with subparagraph (c) of this paragraph:

(b) The facility producer of record shall retain [2]complete[2] control [2][and],[2] possession [2]and ownership[2] of all records and [2][the right and entitlement to][2] renewals regarding exposures assigned pursuant to this paragraph, provided, however, that the member company may maintain such records as are provided to it under the procedure established by subsection a, of section 26 of P.L.1983, c.65 (C.17:30E-14). A member company that acquires access to records pursuant to that subsection shall not share any such records with any other producer or use any such records to solicit direct renewal of the business, a change in producer of record, other insurance products or any other products;

(c) The facility producer of record shall be paid a commission by the member company on the business serviced by the facility producer of record pursuant to this paragraph. That commission shall be paid at a percentage rate no less than that being paid by the Market Transition Facility on July 1, 1991;

(d) A copy of every notice, other than bills, and including renewal declarations, change endorsements, cancellations and reinstatements, and the corresponding payment schedules included therein, correspondence,

claims checks and acknowledgments, sent to an insured by a member company with respect to business covered by this paragraph, shall be sent to the facility producer of record;

(e) The procedure established in subparagraphs (a), (b), (c), (d), (e) and (f) of this paragraph shall be applicable only to exposures assigned to member companies in accordance with this paragraph as a result of the failure by the member company to meet an applicable quota [2][and shall not apply beyond three years after the enactment date of this 1991 amendatory act][2]. This paragraph shall not constitute the grant of an agency contract by the member company to the facility producer of record authorizing the facility producer of record to write new business through the member company; provided, however, that the facility producer of record shall have the authority to provide the usual and customary servicing of the business subject to this paragraph, including adding new and replacement vehicles and adding or changing coverages on the business; and

(f) Nothing in the paragraph shall deprive an insured of the right to designate a producer of record other than the facility producer of record. Upon that designation, the rights of the facility producer of record under this paragraph shall terminate. Notwithstanding any provision in this paragraph, the rights of the facility producer of record under this paragraph shall terminate in the event of the producer's insolvency, gross and willful misconduct, fraud or license revocation[1];

(6) A schedule for the payment of premiums on an installment basis. Any installment payment schedule for

policies issued for a one year period shall provide for installment payments during a period of not less than nine months;

(7) That no policy issued by the facility may be cancelled for nonpayment of premium unless written notice is provided at least 15 days prior to the effective date of cancellation accompanied by the reason for cancellation. Notice shall be provided to the named insured and the producer of record at their last known addresses;

(8) Provide for notification of the named insured and the producer of record at their last known addresses no later than 15 days after the nonrenewal of a facility policy of such nonrenewal; and

(9) Such other provisions as are deemed necessary for the operation of the facility.

d. The commissioner shall apportion any profits or losses of the facility among member companies based on each company's apportionment share as determined for purposes of depopulation pursuant to subsection a. of section 26 of P.L.1983, c.65 (C.17:30E-14).

e. The facility shall be subject to the provisions of P.L.1945. c.132 (C.54:18A-1 et seq.).

(cf; P.L.1990, c.8 § 88)

3. This act shall take effect immediately and shall be retroactive to March 12, 1990.

INSURANCE

Provides that producers of record must be used for automobile insurance coverage assigned to voluntary market insurers under depopulation plans.

[LOGO]

State of New Jersey

DEPARTMENT OF INSURANCE

December 31, 1991

CN 325
TRENTON 08625-0325

Mr. Richard Cibula
Allstate Insurance Company
Allstate Plaza E-3
Northbrook, IL 60062

RE: IN THE MATTER OF THE ASSIGNMENT OF EXPOSURES TO Allstate Insurance Company, A MEMBER COMPANY OF THE NEW JERSEY AUTOMOBILE FULL INSURANCE UNDERWRITING ASSOCIATION AND THE MARKET TRANSITION FACILITY OF NEW JERSEY, PURSUANT TO THE VOLUNTARY MARKET PLACEMENT PROGRAM A91-354

Dear Mr. Cibula:

Enclosed is an Order issued by the Commissioner of Insurance with regard to above-captioned matter.

The Department of Insurance will schedule a meeting for member companies and the servicing carriers in the next week to ten days. If you have any questions, please contact the Auto Residual Market Unit at 609-292-4240.

Very truly yours,

/s/ Jean M. Bickal
Jean M. Bickal
Regulatory Officer
Auto Residual Market Unit

ORDER NO.: A91-354

STATE OF NEW JERSEY
DEPARTMENT OF INSURANCE

IN THE MATTER OF THE ASSIGNMENT OF EXPOSURES TO ALLSTATE INSURANCE COMPANY, A MEMBER OF THE NEW JERSEY AUTOMOBILE FULL INSURANCE UNDERWRITING ASSOCIATION AND THE MARKET TRANSITION FACILITY OF NEW JERSEY, PURSUANT TO THE MANDATORY DEPOPULATION ASSIGNMENT PLAN	)	ORDER

This matter having been opened by the Commissioner of Insurance of the State of New Jersey ("Commissioner") pursuant to the authority of *N.J.S.A.* 17:1C-1 *et seq., N.J.S.A.* 17:30E-1 *et seq., N.J.S.A.* 17:33B-1 *et seq.,* and all powers expressed or implied therein; and

IT APPEARING that *N.J.S.A.* 17:30E-14a requires the Commissioner to establish procedures in the Plan of Operation ("Plan") of the New Jersey Automobile Full Insurance Underwriting Association ("Association") to govern the voluntary writings of applicants and Association insureds without utilization of the Association; and

IT FURTHER APPEARING that pursuant *N.J.S.A.* 17:30E-7, the Association ceased the issuance or renewal of automobile insurance policies effective October 1, 1990, and pursuant to *N.J.S.A.* 17:30E-1 *et seq.,* and 17:33B-1 *et seq.,* the Association has been succeeded in function and responsibility by the Market Transition Facility ("MTF"); and

IT FURTHER APPEARING that *N.J.S.A.* 17:33B-11c(5) requires the Commissioner to establish a Plan of Operation for the MTF which provides procedures for the depopulation of the MTF in accordance with the provisions of the statute; and

IT FURTHER APPEARING that *N.J.S.A.* 17:30E-14c and 17:33B-11c(5), and the Association and MTF Plans of Operation, require the Commissioner to direct the Association and MTF to assign to member companies the balance of exposures needed to meet the applicable quota in the event that any quota established by the Commissioner was not met by the end of the applicable quota period; and

IT FURTHER APPEARING that the member companies of the Association were notified by letter on or about May 15, 1990 of their apportionment share for the depopulation quota period ending September 30, 1990; and

IT FURTHER APPEARING that the depopulation quota established by the Commissioner for the period ending September 30, 1990 was not met according to the quarterly reports filed by the member companies with the Department of Insurance listing in force exposures by territory as of September 30, 1990; and

IT FURTHER APPEARING that Allstate Insurance Company ("Allstate") failed to meet its assigned apportionment share by 32,687 exposures as of September 30, 1990; and

IT FURTHER APPEARING that the Commissioner ordered in Order No. A91-111 the Association and MTF

to assign exposures to Allstate in accordance with the provisions of the Mandatory Depopulation Assignment Plan attached thereto; and

IT FURTHER APPEARING that as a result of a decision of the Superior Court of New Jersey, Appellate Division in *In the Matter of the Assignment of Exposures to the Aetna Casualty And Surety Company, Allstate Insurance Company and Colonial Penn Insurance Company* 248 *NJ Super.* 367 (App. Div. 1991), ("*Aetna*") the Mandatory Depopulation Assignment Plan established by Order No. A91-111 was not implemented; and

IT FURTHER APPEARING that the Association had no policies in force as of October 1, 1991; and

IT FURTHER APPEARING that it is therefore necessary to establish a new Mandatory Depopulation Assignment Plan to provide for the assignment of MTF exposures consistent with *N.J S.A.* 17:30E-1 *et seq.*, 17:33B-11c(5), and the decision of the Court in *Aetna*; and to rescind formally Order No. A91-111.

IT IS on this 31st day of December, 1991,

ORDERED that:

1. The MTF shall assign to Allstate a sufficient number of exposures from MTF policies expiring on or after April 1, 1992 to meet Allstate's assigned apportionment share in accordance with the provisions of the Mandatory Depopulation Assignment Plan (Revision No. 2, December 27, 1991) as set forth in Exhibit 1 and supplementary Exhibits 2 through 5, attached hereto and made a part hereof;

2. Allstate shall comply with the provisions of the Mandatory Depopulation Assignment Plan;

3. Allstate shall be precluded from requiring the assigned MTF policyholder to obtain or maintain membership or qualification for membership in any club, group or organization as a condition for providing automobile insurance coverage, including the payment of dues, membership fees, or other charges;

4. Allstate shall be fined $2,000.00 for every offer of automobile insurance coverage or policy of automobile insurance which Allstate fails to make or issue at least thirty (30) days prior to the expiration date of the assigned MTF policy. Pursuant to *N.J.S.A.* 17:30E-17a, all fines shall be collected and enforced in accordance with *N.J.S.A.* 2A:58-1 *et seq.* (the "Penalty Enforcement Law");

5. Allstate shall be subject to any other penalty provision of *N.J.S.A.* 17:30E-17, and any other penalties authorized by law, if Allstate fails to comply with the terms of this Order and the provisions of the Mandatory Depopulation Assignment Plan; and

6. Order No. A91-111 is hereby rescinded.

12/31/91 /s/ Samuel F. Fortunato
Date Samuel F. Fortunato
Commissioner

JC40/ORDERS

EXHIBIT 1

MANDATORY DEPOPULATION ASSIGNMENT PLAN

The following procedures shall govern the assignment of exposures by the Market Transition Facility of New Jersey ("MTF") to every member company ordered by the Commissioner of Insurance of the State of New Jersey ("Commissioner") to receive such assignments as a result of the member company's failure to write its apportionment share established by the Commissioner for the depopulation quota period which ended September 30, 1990:

1. Assignment of private passenger automobile non-fleet exposures ("exposures") shall be made from those rating territories indicated below. For purposes of this Mandatory Depopulation Assignment Plan ("MDAP"), these rating territories shall be referred to as the territories subject to assignment.

Rating Territory No.	Brief Territory Description	Target Territory Assignment Percentages
27	Cumberland/Ocean/ Atlantic	16.34%
14	Gloucester/Salem/ Burlington	12.98%
40	New Brunswick	10.18%
03	Paterson	9.55%
01	Jersey City	9.01%
04	Elizabeth	7.75%
16	Long Branch	6.71%
11	South Bergen County	5.98%
02	Newark	4.54%

13	Camden County (Balance)	3.80%
08	Perth Amboy	3.38%
22	Newark Semi-Suburban	2.75%
38	East Orange/Orange	2.12%
07	Camden	1.67%
23	Hudson County	1.53%
05	Bayonne	1.20%
19	Atlantic City	0.49%

2. The quarterly in-force exposure reports filed by the member companies for the period ending September 30, 1990, after adjustments were made for exemptions and revisions to in-force exposures, indicate that those member companies that failed to write their apportionment shares, in the aggregate, fell short by 204,050 exposures. The assignment of exposures to these member companies shall be made from the territories subject to assignment.

3. The number of exposures assigned to each member company may be increased by an acceptance factor of up to 25 percent. The resulting number shall be rounded off and be referred to as the member company's individual assignment goal. The sum of all the member company's individual assignment goals shall be referred to as the overall assignment goal. It is the expectation of the Department that not every offer of coverage made by a member company to its assigned policyholders will be accepted. This expectation is based on the dynamic aspect of the New Jersey automobile insurance market. (*i.e.*, MTF policyholders independently seeking coverage with a voluntary insurer, competition among member companies to write additional new business in order to meet future depopulation quotas, MTF policyholders leaving

New Jersey) and the requirement that member companies only write eligible persons.

4. The number of exposures to be assigned to each member company per territory shall be determined as follows:

a. An assignment percentage shall be determined by dividing the overall assignment goal by the total number of available MTF exposures from the territories subject to assignment. The methodology will result in an equal percentage of MTF exposures being assigned from each territory subject to assignment.

b. The target number of exposures to be assigned from each territory subject to assignment shall be determined by multiplying the number of MTF exposures available for that territory (as of the most recent quarterly in-force exposure report) by the assignment percentage.

c. A target territory assignment percentage shall be determined for each territory subject to assignment by dividing the target number of exposures to be assigned from such territory by the overall assignment goal.

d. The target number of exposures to be assigned to each member company from each territory subject to assignment shall be determined by multiplying the target territory assignment percentage by the member company's individual assignment goal.

e. The monthly number of exposures to be assigned to each member company from each territory subject to assignment shall be determined by dividing the

target number of exposures to be assigned to the member company for the territory subject to assignment by twelve (12). The resulting number shall be rounded off.

f. The resulting monthly numbers for each member company shall be adjusted by a fitting algorithm to ensure that a sufficient number of exposures are assigned to meet the member company's individual assignment goal.

g. The number of exposures to be assigned to each member company shall be the sum of all monthly exposures to be assigned to that member company from each territory subject to assignment.

5. For the purposes of the MDAP, offer of coverage means making an offer of automobile insurance coverage at least 30 days prior to the expiration date of the assigned MTF automobile insurance policy (for those member companies that make offers of coverage to applicant prior to the issuance of the automobile insurance policy) or issuing a policy of automobile insurance at least 30 days prior to the expiration date of the assigned MTF automobile insurance policy (for those member companies that do not make offers of coverage to applicants).

6. a. The member company shall make offers of coverage to every person listed on the assigned MTF policy, who the member company has determined to be an eligible person in accordance with item 18 below, at least 30 days prior to the expiration date of the assigned MTF policy (*i.e.*, upon renewal of the MTF policy). The

offer of coverage shall include, for each assigned exposure, the coverages, limits, options and deductibles transferred to the member company under item 18 below and Policyholder Assignment Notice attached hereto as Exhibit 2A, in accordance with item 9 below. The offer of coverage shall be contained in an envelope appropriately emboldened on the outside with the statement "IMPORTANT AUTO INSURANCE MATERIALS ENCLOSED."

b. The member company shall include with the offer of coverage the statements of privacy practices required by law (*e.g.*, Insurance Information Practices Act (*N.J.S.A.* 17:23A-1 *et seq.*); Fair Credit Reporting Act). The member company may include an authorization form to be signed by the assigned MTF policyholder in order to obtain investigative consumer reports. Provided, however, that the failure of the assigned policyholder to return a signed authorization form shall not be grounds for the member company to decline coverage, or cancel, nonrenew or otherwise terminate the policy during the one (1) year period required by item 12 below.

7. The member company is expressly prohibited from requiring the assigned MTF policyholder to obtain or maintain membership or qualification for membership as a condition for providing automobile insurance coverage, including, but not limited to, charging dues, membership fees or other charges.

8. The member company shall continue to make offers of coverage to all eligible persons on assigned MTF policies even after the member company has written sufficient exposures to meet its apportionment share shortfall. Any exposures written in excess of the apportion-

ment share shortfall may be used by the member company toward the fulfillment of its next apportionment share.

9. a. If the underwriting review by the member company determines that some or all of the drivers on the policy transferred from the MTF are eligible persons, the member company shall mail the Policyholder Assignment Notice attached hereto as Exhibit 2A with the offer of coverage as required by item 6 above. The Policyholder Assignment Notice must list *all* policyholders and operators on the MTF policy as either eligible or ineligible.

b. If the underwriting review by the member company determines that all of the drivers on the assigned policy are *not* eligible, the member company shall send the Policyholder Ineligibility Notice attached hereto as Exhibit 2B to the assigned MTF policyholder.

c. Copies of the Policyholder Assignment Notice or Policyholder Ineligibility Notice (hereafter, Notices) sent to the policyholder, whether Exhibit 2A or 2B shall be sent simultaneously to the Servicing Carrier and the Producer of Record.

d. Except for format changes, any change to the Notices must be approved by the Automobile Residual Market Unit of the Department before such notice is mailed to any MTF policyholder (*e.g.*, changes to the required information, adding additional information to the notice, changes in type pointsize). For purposes of this paragraph, format change means only the realignment of the required information to accommodate the various data processing systems of the member companies.

e. The type size used in the Notices shall be at least 10-point. The type style used in the Notices shall be the same type style used by the member company in the Buyer's Guide (*N.J.A.C.* 11:3-15.1 *et seq.*). The size of the paper shall be eight and one-half inches by eleven inches. The member company may print the required Notices on both sides of the paper.

10. It is the responsibility of the member company to be able, upon request, to demonstrate to the satisfaction of the Department or MTF that an offer of coverage and/or the correct Notice was mailed to the assigned MTF policyholder.

11. The member company shall offer the same or equivalent automobile insurance coverage that was afforded under the MTF policy to every assigned MTF policyholder where the member company has rates and rules for such coverage filed and approved by the Department. Where the member company does not have rates and rules filed and approved by the Department for the same or equivalent coverage presently afforded the assigned policyholder under the MTF policy, the member company shall offer to the assigned MTF policyholder the next broadest coverage for which the member company has rates and rules filed and approved by the Department. The member company is expressly prohibited from offering less coverage to the assigned policyholder than the coverage afforded to such policyholder under the MTF policy.

The following examples are provided for illustration purposes only:

Example 1: The MTF policyholder presently has $25,000/$50,000/$10,000 split limits of liability coverage. However, the member company that has been assigned this policyholder only writes combined single limit of liability coverage and only has rules and rates filed and approved by the Department for this type coverage. Therefore, the member company must offer the MTF policyholder a combined single limit of liability coverage which is equal to the bodily injury occurrence limit and the property damage occurrence limit added together or the next broadest available coverage (*e.g.*, $75,000, but in no event less than $60,000).

Example 2: The MTF policyholder presently has $25,000/$50,000/$10,000 split limits of liability coverage. The member company that has been assigned this policyholder only writes combined single limit of liability coverage and offers $100,000 combined single limit of liability coverage as the minimum coverage to its voluntary insureds. However, the member company has rates and rules filed and approved by the Department for combined single limit of liability coverage for amounts less than $100,000. Therefore, the member company must offer the MTF policyholder a combined single limit of liability coverage which is equal to the bodily injury occurrence limit and the property damage occurrence limit added together or the next broadest available coverage, but less than $100,000 (*e.g.*, $75,000, but in no event less than $60,000).

Example 3: The MTF policyholder presently has $25,000/$50,000/$10,000 split limits of liability coverage. The member company that has been assigned this policyholder only writes combined single limit of liability

coverage and offers $100,000 combined single limit of liability coverage as the minimum coverage to its voluntary insureds. The member company does not have any rates and rules filed and approved by the Department for amounts of combined single limit of liability coverage less than $100,000. Therefore, the member company must offer the MTF policyholder $100,000 combined single limit of liability coverage.

Example 4: The MTF policyholder presently has $75,000 combined single limits of liability coverage. The member company that has been assigned this policyholder writes both split limits and combined single limit of liability coverage and has rates and rules filed and approved by the Department for both types of coverage. Therefore, the member company must offer the MTF policyholder $75,000 combined single limit of liability coverage and not a split limits policy.

Example 5: The MTF policyholder presently has $100,000 combined single limit of liability coverage. The member company that has been assigned this policyholder writes only split limits of liability coverage and only has rates and rules filed and approved by the Department for this type of coverage. Therefore, the member company must offer the MTF policyholder split limits of liability coverage with a bodily injury per person limit equal to the combined single limit of liability coverage or the next broadest available coverage (*e.g.*, $100,000/$300,000/$50,000). (Note: All conversions of combined single limit of liability coverage should be handled in the same manner, except a $35,000 combined single limits policy. In this particular case, the member

company shall offer \$15,000/\$30,000/\$5,000 split limits of liability coverage.)

12. a. Upon acceptance of the offer of coverage by the MTF policyholder, the member company shall, at a minimum, write and service the assigned exposure(s) for a period of one (1) year from the policy expiration date of the assigned MTF policy, regardless of the member company's customary policy term (*e.g.*, 6 months). The member company shall provide coverage or continue to provide coverage to the assigned insured even though the assigned insured becomes ineligible after the completion of the underwriting review period permitted by item 18 below. The member company may nonrenew the policy of any ineligible person at the expiration of the 12 month policy period in accordance with the applicable New Jersey statutes and regulations in effect at the time of such nonrenewal.

b. For purposes of this paragraph, writing and servicing the assigned exposure shall be given the broadest possible meaning while the policy is in force, including, but not limited to, (i) adjusting claims resulting from accidents and (ii) adding or deleting vehicles, adding or deleting eligible drivers and adding, changing or deleting coverages, limits, options or deductibles when requested to do so by the assigned policyholder. The member company shall provide any change properly requested by the assigned policyholder during the mandatory one (1) year assignment period for which the member company has rates and rules filed and approved by the Department. Essentially, the assigned MTF policyholder shall have the same rights during this one (1) year period as if the policy were insured through the MTF.

13. Upon acceptance of the offer of coverage, the member company shall be permitted to charge additional premium in accordance with its rates and rules filed and approved by the Department based on subsequent information supplied to the member company (*e.g.*, undisclosed motor vehicle violations and/or accidents, change in the number of miles driven to work due to new employment or change in coverage requested by policyholder).

14. a. Included with the offer of coverage or upon acceptance of the offer of coverage by the assigned MTF policyholder, the member company shall provide the assigned MTF policyholder with a Coverage Selection Form and the New Jersey Auto Insurance Buyer's Guide ("Buyer's Guide"). The Coverage Selection Form shall be filled in by the member company with the applicable information provided to the member company by computer tape in accordance with item 18 below (*e.g.*, policyholder name, coverages, limits, options and deductibles). The member company shall ask the assigned MTF policyholder to sign and return the Coverage Selection Form. The assigned policyholder has the right to elect different coverages, limits, options and deductibles.

b. Where the assigned MTF policyholder has accepted coverage with the member company but has failed to return a signed Coverage Selection Form, the member company shall send a second completed Coverage Selection Form and Buyer's Guide to the assigned policyholder in accordance with the proof of mailing procedures set forth in *N.J.S.A.* 17:29C-10. The second Coverage Selection Form and Buyer's Guide shall be

accompanied by the policyholder notice attached hereto as Exhibit 3. This notice shall inform the policyholder that failure to return a signed Coverage Selection Form to the member company will result in the tort option and the physical damage deductibles being changed to the statutory defaults (*i.e.*, lawsuit threshold, $500 physical damage deductibles). The policyholder notice shall follow the same requirements set forth under item 9 above (*i.e.*, type size, type style, changes to the notice, paper size). Provided, however, that the failure of the assigned policyholder to return a signed Coverage Selection Form shall not be grounds for the member company to cancel or otherwise terminate the policy.

15. The member company shall comply with all applicable New Jersey statutes and regulations in providing coverage to the assigned MTF policyholder (*e.g.*, mandatory physical damage inspection).

16. In providing coverage to the assigned MTF policyholder, the member company shall issue the policy in accordance with its voluntary business practices to the extent practicable. Provided, however, that the member company shall not be permitted to utilize its voluntary business practices during the one (1) year period required by item 12 above where such practices are more restrictive than the standards utilized by the MTF.

For example, the MTF presently permits the policyholder to pay the annual premium in six (6) installment payments. The last payment is due 270 days after the effective date of the policy. A member company cannot use its voluntary installment payment plan if such plan requires the assigned policyholder to pay the annual

premium in less than six (6) installments or less than 270 days from the effective date of the policy.

17. Except for the reasons set forth in *N.J.S.A.* 17:29C-7(A), the member company shall not be permitted to decline coverage or cancel, nonrenew or otherwise terminate the assigned exposure during the one (1) year period required by item 12 above. Upon expiration of this one (1) year period, the member company may cancel or nonrenew the assigned exposure in accordance with New Jersey statutes and regulations in effect at the time of such cancellation or nonrenewal.

18. a. Each month for twelve (12) consecutive months after the effective start date of the MDAP, each member company that is subject to mandatory assignment of exposures shall receive policy information from an assigned MTF servicing carrier at least 75 days prior to the expiration date of the assigned MTF policies. Each member company shall receive, by overnight or priority mail, their monthly mandatory assignments by computer tape. Where the due date for the delivery of the computer tape falls on a weekend or holiday, the assigned MTF servicing carrier shall deliver the monthly computer tape by the close of business of the next business day. The type of computer tape (i.e., cartridge or reel) utilized for the purposes of this MDAP shall be left to the sole discretion of the assigned MTF servicing carrier. The MTF servicing carrier shall provide the policy information to the member company in the record format set forth in the Exhibit 5.

For purposes of illustration only, assume the MDAP requires member companies to provide coverage to

eligible MTF persons whose policies expire during the month of April, 1992. On or before January 15, 1992, the assigned MTF servicing carrier will deliver to the member company a computer tape listing all the assigned MTF policies due to expire during the month of April, 1992.

b. Within three (3) calendar days of receipt of the monthly computer tape, the member company shall evaluate the computer tape. The member company shall notify both the assigned MTF servicing carrier and the Department of any problems encountered by the member company with the monthly computer tape (e.g., unreadable tape, missing policy information essential to the proper rating of the policy). To the extent practicable, the assigned MTF servicing carrier shall resolve all problems encountered by the member company with such tape within three (3) calendar days from the date of notification of such problems (e.g., resubmit a new tape). Where the third calendar day falls on a weekend or holiday, the problem shall be resolved by the close of business of the next business day.

c. The member company shall be permitted to perform an underwriting review of the assigned MTF policies received by computer tape pursuant to paragraph (a) above to determine if any assigned person is not an eligible person as defined in *N.J.A.C.* 11:3-34.1 *et seq*. For the purposes of the MDAP, the definition of eligible person shall *not* include membership qualifications or fees as set forth in *N.J.A.C.* 11:3-34.4(a)(7). See also, *N.J.S.A.* 17:33B-26. In determining whether a person listed on an assigned MTF policy is not an eligible person, the member company shall utilize the standards set

forth in *N.J.A.C.* 11:3-8.4(a). Essentially, the member company is not required to offer coverage to any person listed on the assigned MTF policy that the member company has determined not to be an eligible person in accordance with the applicable standards. The member company, however, shall offer coverage to all eligible persons listed on the assigned MTF policy.

d. All underwriting reviews shall be completed by the member company within 60 days of receipt of the computer tape from assigned MTF servicing carrier. For purposes of this MDAP, 60 days means two (2) calendar months.

For purposes of illustration only, assume the MDAP requires member companies to provide coverage to eligible persons whose MTF policy expires during the month of April, 1992. The member company receives its monthly computer tape from its assigned MTF servicing carrier on or before January 15, 1992 containing all the assigned MTF policies due to expire during April, 1992. All underwriting reviews shall be completed by the member company by the close of business on March 15, 1992. In order to make offers of coverage at least 30 days prior to the expiration date of the MTF policy as required by paragraph 6 above, it is assumed that the member company will begin issuing offers of coverage on or before March 1, 1992 for those MTF policies expiring April 1 through April 15, 1992 and begin issuing offers of coverage on or before March 15, 1992 for those MTF policies expiring April 16 through April 30, 1992.

e. The member companies are encouraged to exchange test computer tapes with its assigned MTF servicing carrier prior to the start of the MDAP.

f. The member companies shall complete any request form provided by its assigned MTF servicing carrier. The form and content of the form shall be prescribed by MTF servicing carrier. The purpose of this form is to inform MTF servicing carrier where MTF servicing carrier is to send the monthly computer tapes and the name, title, telephone number and facsimile number of a contact person for the member company. Where the member company intends to use a third party, subcontractor, pooling company and/or other entity to write the mandatory assignments on its behalf, the member company shall also supply the name, title, telephone number and facsimile number for a contact person at the third party, subcontractor, pooling company and/or other entity.

h. The use of a third party, subcontractor, pooling company and/or other type entity to write the mandatory assignments on behalf of the member company shall *not* relieve the member company of its responsibilities under the MDAP.

19. All member companies shall be permitted to use MTF rates and rules as authorized by *N.J.S.A* 17:33B-11(c)(2) and *N.J.S.A.* 17:33B-12 for the exposures mandatorily assigned from the MTF. The member company shall notify the Department of its election to use or cease using MTF rates in accordance with the requirements set forth in Department Order No. A91-339. The applicable MTF rule and rate pages shall be made available to member companies by the MTF for a reasonable fee to be determined by the MTF.

20. The member company shall be permitted to use prospectively rates and rules filed and approved by the Department after the start of the MDAP. Provided, however, member companies that issue six (6) month policies shall be precluded from using the new approved rates and rules in issuing the second six (6) month policy, but rather shall use the same rates and rules which were used in issuing the first six (6) month policy.

21. The producer of the assigned MTF policy shall not be permitted to place any new business with the member company, unless the producer and member company enter into a voluntary agreement. Furthermore, the member company is under no obligation to service the assigned business through, or pay a commission to, the producer of record of the assigned MTF policy.

22. Each quarter after the effective start date of the MDAP until the quarter ending June 30, 1994, each member company shall report separately, by territory, the following information to the Department concerning the exposures assigned to it under this MDAP:

a. The number of policies, insureds and exposures received from its assigned MTF servicing carrier;

b. The number of persons listed on the assigned MTF policies who the member company has determined not to be eligible persons;

c. The number of offers of coverage issued for eligible persons;

d. The number of offers of coverage accepted by eligible persons and the number of exposures in force;

e. The number of policies which are canceled or nonrenewed. Whenever a policy is canceled or nonrenewed, the member company shall provide the Department with a separate report from that required by this provision indicating the policyholder's name, address (including zip code), telephone number (including area code), policy number and the specific reason why such policy was canceled or nonrenewed; and

f. The number of exposures which are canceled or nonrenewed.

23. The information required by item 22 above shall be delivered and received by the Department no later than the close of business on the 20th calendar day of the month following the close of the calendar quarter. Where the 20th calendar day falls on a weekend or holiday, the report is due by the close of the next business day. The report and the content of the report required by item 22 above shall be prescribed by the Department and is attached hereto as Exhibit 6. The report required by item 22 above shall be mailed to the Department at the following address:

New Jersey Department of Insurance
Automobile Residual Market Unit
20 West State Street
CN 329
Trenton, New Jersey 08625-0329
Telephone Number: (609) 292-4240
Facsimile Number: (609) 392-0047

If the MDAP requires member companies to provide coverage to eligible persons whose MTF policies expire

during the month of April, 1992, the first member company report would be due July 20, 1992 for the calendar quarter ending June 30, 1992.

24. All costs associated with the administration of this MDAP, as approved by the Commissioner, shall be paid by the member companies that are subject to mandatory assignments. Such costs shall include, but are not limited to, computer time of the MTF servicing carriers; programming costs; cost of computer tapes; reproduction of MTF rate pages; postage and priority mail service. The methodology for apportioning these costs among the member companies subject to mandatory assignments shall be subsequently determined by the Department.

25. The Commissioner reserves the right to make additional assignments pursuant to this MDAP if he determines that the goals of such plan are not being met based on the reports filed by the member companies pursuant to item 22 above.

26. The Commissioner reserves the right to revise the provisions of the MDAP as he deems necessary in order to accomplish the goals of such plan.

27. The Commissioner reserves the right to perform audits, at the expense of the member company, to verify the eligibility determination of the member company pursuant to item 18 above.

(SEAL)

STATE OF NEW JERSEY
DEPARTMENT OF INSURANCE

JASPER J JACKSON
DEPUTY COMMISSIONER

P O BOX CN 325
TRENTON 08625
609-292-6812

January 10, 1992

Mr. R. Terry Haskins
Chief Operating Officer
Market Transition Facility
293 Eisenhower Parkway
Livingston, New Jersey 07039

Re: Amendment to the Plan of Operation

Dear Mr. Haskins:

Article V(4), of the MTF Plan of Operation requires a plan to be developed and approved by the Commissioner for the apportionment of profits or losses among the member companies.

I am, therefore, proposing amendments to Article V, Financial and proposing Article XIV, Apportionment of MTF Profits and Losses, to the MFT's Plan of Operation. The amendment to Article V distinguishes the different reporting periods for the purposes of operating results to member companies and for income tax and statutory reporting. Article XIV describes the apportionment plan which is based upon the Aggregate Voluntary Market Industry Quota as defined in Part I of the Plan of Operation.

In view of the fact that some member companies may include the apportionment in their annual statement and

it is imperative to do so now that the companies can prepare their annual statement, I am exercising my right under the Plan of Operation, Article IX(2) (c) to certify this amendment to the members of the Advisory Board. Written comments on the proposal may be sent to the Department by facsimile transmission at (609) 392-0047. I shall certify the proposed amendment to the Plan on January 15, 1992.

Very truly yours,

/s/ Jasper J. Jackson
Jasper J. Jackson
Acting Commissioner

Enclosure
c: Jean Bickal, Regulatory Officer
Donald Bunda, Deputy Attorney General
MTF Advisory Board